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Contents

Federal Register

Vol. 71, No. 57

Friday, March 24, 2006

Agricultural Marketing Service
PROPOSED RULES
Regulatory Flexibility Act:
Periodic review of regulations; plan, 14827–14828

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Foreign Agricultural Service
See Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 14855–14856

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Emerald ash borer, 14795–14797

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Article of footwear with temperature regulation means, 14856

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Energy Employees Occupational Illness Compensation Program Act of 2000:
Lung cancer risk model; probability of causation determination; guideline change; comment request, 14896–14897
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 14897–14898
Mine escape planning and emergency shelters; workshop, 14898

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14898–14900
Committees; establishment, renewal, termination, etc.:
Emergency Medical Treatment and Labor Act Technical Advisory Group, 14900–14901
Medicare Coverage Advisory Committee, 14901–14903
Medicare:
Medicare Advantage Deeming Authority Program; evaluation criteria, 14922–14924
Medicare and medicaid:
Program issuances and coverage decisions; quarterly listings, 14903–14922
Meetings:
Healthcare Common Procedure Coding System; coding and payment determinations, 14924–14926

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14926–14927

Coast Guard
RULES
Drawbridge operations:
Florida, 14804–14806
New Jersey
Correction, 14804

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 14832–14833

Customs and Border Protection Bureau
NOTICES
Tariff rate quotas:
Tuna, 14934

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
NOTICES
Meetings:
Women in Services Advisory Committee, 14855

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cerilliant API Services, LLC, 14948

Education Department
RULES
Civil rights:
Boy Scouts of America Equal Access Act; implementation, 14994–15003

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Ablest Staffing Services, 14951
Adobe Air, Inc., 14951
Classic Print Products, Inc., 14951
Cognis Corp., 14951–14952
IBM et al., 14952–14953
Klaussner Furniture Ind., et al, 14953–14955
Liberty Fibers Corp., 14955

Motorola, Inc., 14955
Sara Lee Branded Apparel, 14956–14957
Unimatrix Americas, 14957–14958

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer products; energy conservation program:
Mitsubishi Electric; waiver from residential and commercial test procedures, 14858–14873

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Cabell County, WV; Lower Mud River Watershed Project, 14856
Calhoun and Matagorda Counties, TX; widening and deepening of Matagorda Ship Channel, 14857
Virginia and Mayland; Chesapeake Bay Oyster Recovery Project, 14857–14858
Meetings:
Coastal Engineering Research Board, 14858

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Maine, 14815–14816
North Carolina, 14817–14821
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 14831
NOTICES
Environmental statements; availability, etc.:
Agency comment availability, 14891–14892
Agency weekly receipts, 14892–14893

Federal Aviation Administration
RULES
Class E airspace, 14797–14798
PROPOSED RULES
Class E airspace, 14829–14831

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14893–14894

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance regulations:
Mint; correction, 14828

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14934–14936
Disaster and emergency areas:
Nevada, 14936
Texas, 14936

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 14879–14882
Environmental statements; notice of intent:
Central New York Oil & Gas Co., LLC, 14882–14884
Eastern Shore Natural Gas Co., 14884–14886
Hydroelectric applications, 14886–14887
Meetings:
Maritimes & Northeast Pipeline, L.L.C., 14887–14888
Midwest Independent Transmission System Operator, Inc.; technical conference, 14888
Reports and guidance documents; availability, etc.:
Demand response resources assessment; voluntary survey, 14888–14891
Applications, hearings, determinations, etc.:
Appalachian Power Co., 14873
CenterPoint Energy Gas Transmission Co., 14873–14874
Dominion Transmission, Inc., 14875
Florida Gas Transmission Co. et al., 14875–14876
Garden Banks Gas Pipeline, LLC, 14876
Gas Transmission Northwest Corp., 14876
Guardian Pipeline, L.L.C., 14877
Iroquois Gas Transmission System, L.P., 14877
KO Transmission Co., 14877–14878
Southern Star Central Gas Pipeline, Inc., 14878
Traverse City Light and Power Board, 14878
Viking Gas Transmission Co., 14878–14879

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 14894

Federal Motor Carrier Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Motor Carrier Safety Assistance Program, 14986–14988

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 14894
Formations, acquisitions, and mergers, 14894–14895

Federal Trade Commission
NOTICES
Organization, functions, and authority delegations:
Associate Director for International Consumer Protection, 14895

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Kirwin National Wildlife Refuge, KS, 14939–14940
Endangered and threatened species:
West Indian manatee; 5-year review, 14940–14941

Food and Drug Administration
RULES
Human drugs, medical devices, and biological products:
Human cells, tissues, and cellular and tissue-based products; donors eligibility determination
Correction, 14798
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14927–14928

Foreign Agricultural Service
NOTICES
Adjustment assistance; applications, determinations, etc.:
Olive Growers Council, 14832

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Sharp Electronics Corp.; office and consumer electronics/home products/solar panels warehousing and distribution facility; correction, 14833

Forest Service
NOTICES
Recreation fee areas:
Tonto National Forest; campgrounds, picnic sites and horse camps, 14832

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Scientific misconduct findings; administrative actions:
Woreta, Hiwot A., 14895–14896

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14928–14929

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency
NOTICES
Committees; establishment, renewal, termination, etc.:
Critical Infrastructure Partnership Advisory Council, 14930–14933
Meetings:
Transparency and Accountability: The Use of Personal Information within the Government; public workshop, 14934

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 14936–14938

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Constan-Tatos, Phaedon Nicholas Criton, 14833–14834

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14938–14939

Internal Revenue Service
RULES
Income taxes:
Relative values of optional forms of benefit; disclosure, 14798–14804
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14989–14992

International Trade Administration
NOTICES
Antidumping:
Frozen warmwater shrimp from—
Vietnam, 14834–14835
Steel concrete reinforcing bars from—
Turkey, 14835–14836

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14948–14950

Land Management Bureau
RULES
Oil and gas leasing:
Acreage limitation exemptions and reinstatment of oil and gas leases, 14821–14823
NOTICES
Environmental statements; availability, etc.:
Green River/Hamms Fork Coal Production Region, Sweetwater County, WY; Pit 14 Tract coal lease application, 14941–14942
Environmental statements; notice of intent:
Colorado, Kansas, and Wyoming; Overland pass natural gas liquids pipeline; public scoping meetings, 14942–14943
Survey plat filings:
Minnesota, 14943

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14943–14945
Outer Continental Shelf operations:
Civil monetary penalties paid January 1 - December 31, 2005; list, 14945–14948

Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14956
Meetings:
Mine escape planning and emergency shelters; workshop, 14898

National Archives and Records Administration
RULES
National security classified information; declassification, 14808–14815

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Gerber, Elyse; petition denied, 14988

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 14929

National Institute of Child Health and Human Development, 14929–14930
Scientific Review Center, 14930

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 14825–14826
Pollock, 14824–14825
West Coast States and Western Pacific fisheries—
Western Pacific pelagic; shallow-set pelagic longline fishery closure, 14824
NOTICES
Endangered and threatened species:
Cook Inlet beluga whale; status review, 14836–14837
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Yellowfin tuna, 14837
Grants and cooperative agreements; availability, etc.:
Ernest F. Hollings Undergraduate Scholarship Program, 14838–14839
Marine mammals:
Incidental taking; authorization letters, etc.—
Marine Geophysical Survey; Eastern Tropical Pacific Ocean; multispecies, 14839–14853
Vandenberg Air Force Base, CA; 30th Space Wing, U.S. Air Force; rocket launches; seals and sea lions, 14853–14855

Nuclear Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Medical Uses of Isotopes Advisory Committee, 14959
Domestic licensing proceedings and issuance of orders:
Radioactive material quantities of concern; licensees authorized to possess and transfer items; additional security measures imposition, 14959–14961
Radioactive material quantities of concern; safeguards information protection requirements, 14961–14964
Regulatory agreements:
Minnesota, 14965–14966
Applications, hearings, determinations, etc.:
Geisen, David, 14958
Miller, Dale L., 14958
Moffitt, Steven P., 14958–14959

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Upper Rio Grande Basin Water Operations Review, NM, 14948

Saint Lawrence Seaway Development Corporation
RULES
Seaway regulations and rules:
Tariff of tolls, 14806–14808

Securities and Exchange Commission
NOTICES
Meetings:
Smaller Public Companies Advisory Committee, 14966–14967
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 14967–14975
International Securities Exchange, Inc., 14975–14976
Pacific Exchange, Inc., 14977–14982

Small Business Administration
NOTICES
Disaster loan areas:
Missouri, 14982
Oklahoma, 14982
Texas, 14982–14983
Small business size standards:
Nonmanufacturer rule; waivers—
Water treatment chemicals, 14983–14984

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14984–14986

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, control, etc.:
Union Pacific Railroad Co., 14988–14989

Technology Administration
NOTICES
Senior Executive Service Performance Review Boards; membership, 14855

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Saint Lawrence Seaway Development Corporation
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Education Department, 14994–15003

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
301 14795
Proposed Rules:
Ch. I 14827
Ch. IX 14827
Ch. X 14827
Ch. XI 14827
457 14828

14 CFR
71 (2 documents) 14797
Proposed Rules:
71 (2 documents) 14829, 14830

21 CFR
1271 14798

26 CFR
1 14798

33 CFR
117 (2 documents) 14804
402 14806

34 CFR
75 14994
76 14994
108 14994

36 CFR
1260 14808

40 CFR
52 (2 documents) 14815, 14817
Proposed Rules:
52 14831

43 CFR
3100 14821

50 CFR
660 14824
679 (2 documents) 14824, 14825

Rules and Regulations

Federal Register
Vol. 71, No. 57
Friday, March 24, 2006

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–125–4]

Emerald Ash Borer; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, three interim rules regarding emerald ash borer (EAB). The first interim rule established regulations restricting the interstate movement of regulated articles from areas quarantined because of EAB and designated 13 counties in Michigan as quarantined areas. The second and third interim rules amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB. As a result of those actions, the interstate movement of regulated articles from the quarantined areas is restricted. The interim rules were necessary to prevent the artificial spread of EAB from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

DATES: Effective on March 24, 2006, we are adopting as a final rule the interim rules that became effective on October 8, 2003, December 28, 2004, and February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on October 8, 2003, and published in the **Federal Register** on October 14, 2003 (68 FR 59082–59091, Docket No. 02–125–1), we amended the Domestic Quarantine Notices in 7 CFR part 301 by adding a new ''Subpart—Emerald Ash Borer'' (§§ 301.53–1 through 301.53–9, referred to below as the regulations). The regulations designated 13 counties in the southeastern portion of the State of Michigan as quarantined areas because of emerald ash borer (EAB) and restricted the interstate movement of regulated articles from the quarantined areas.

In a second interim rule effective December 28, 2004, and published in the **Federal Register** on January 4, 2005 (70 FR 249–253, Docket No. 02–125–2), we amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB and restricting the interstate movement of regulated articles from the quarantined areas.

In a third interim rule effective February 25, 2005, and published in the **Federal Register** on March 3, 2005 (70 FR 10315–10318, Docket No. 02–125–3), we amended the regulations by adding more areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB and restricting the interstate movement of regulated articles from the quarantined areas.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We received two comments by the close of the comment period for the first interim rule. We did not receive any comments on the January 2005 or March 2005 interim rules. The comments that we received regarding the October 2003 interim rule were from a State agricultural agency and a private citizen. Both commenters supported the interim rule. However, one commenter offered several suggestions, which are discussed below.

The commenter suggested that nurseries engaged in the interstate shipment of nursery stock be required to create and maintain for regulatory inspection, for an appropriate number of years, records documenting the following information for each shipment: Origin of stock shipped, destination, date of shipment, description of stock, and quantity of stock.

The regulations in § 301.53–4 require that, with the exception of articles that originate outside a quarantined area or that are being moved by the U.S. Department of Agriculture, regulated articles being moved interstate from a quarantined area must be accompanied by a certificate or limited permit. In addition, under § 301.53–8, regulated articles must be plainly marked with the names and addresses of the consignor and the consignee, and the certificate or limited permit must be securely attached to the regulated article, the container carrying the regulated article, or the consignee's copy of the accompanying waybill. We believe that the information generated through compliance with these requirements will provide the specific sorts of information suggested by the commenter.

The commenter suggested that, in light of the practical difficulty of delineating the full extent of EAB infestation in a given locality, as well as the discovery of EAB outside the core areas of infestation in Michigan originally listed in the regulations, the EAB quarantine be expanded beyond the current range to include the entire State of Michigan, possibly excluding the Upper Peninsula.

The regulations in § 301.53–3(a) provide that the Administrator will list as a quarantined area each State or portion of a State in which the EAB has been found by an inspector, in which the Administrator has reason to believe that the EAB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where the EAB has been found. If we and/or our State cooperators identify additional areas that meet any of these criteria for the designation of quarantined areas, we will amend our regulations accordingly.

The commenter also suggested that a ''firebreak'' across southeastern Michigan, in which all ash trees would be removed along a band at least one-half mile wide, could be of great benefit in preventing the further spread of EAB into Ohio and other noninfested areas of the United States, citing that the benefits of such a firebreak would vastly outweigh the negative impact.

The commenter submitted this suggestion before we published the second and third interim rules establishing quarantined areas for EAB in Indiana and Ohio. Currently, control techniques and detection and delineation efforts are being utilized by APHIS, State, and city cooperators, as well as the U.S. Forest Service, in order to eradicate this pest. The idea of a firebreak has been examined, but we have determined that due to the expanded scope of the infestation in Indiana and Ohio, the quarantined areas are large enough to make a firebreak impractical from cost and management perspectives. We are making no changes in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. In addition, this action affirms the information contained in the October 2003 and January 2005 interim rules concerning the Regulatory Flexibility Act.

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

Regulatory Flexibility Act

This rule follows a series of three interim rules regarding EAB. The first interim rule established regulations restricting the interstate movement of regulated articles from areas quarantined because of EAB and designated 13 counties in Michigan as quarantined areas. The second and third interim rules amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB. In the first and second interim rules, published in October 2003 and January 2005, respectively, we addressed the economic effects, including effects on small entities, associated with the establishment of the EAB quarantine and regulations and the designation of all or portions of 26 counties in Indiana, Michigan, and Ohio as quarantined areas. The following analysis examines the economic effects on small entities associated with the March 2005 interim rule's extension of the quarantined areas in 1 county in Indiana, 5 counties in Michigan, and 3 counties in Ohio, and the addition of all or portions of 20 counties in Michigan to the list of areas quarantined because of EAB.

Economic Effects on Small Entities

The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification (NAICS) for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS code 111421) is $750,000 or less in annual receipts, and $5 million or less in annual receipts for forest nurseries and gathering of forest products (NAICS code 113210). The small business size standard based upon NAICS codes 113310 (logging operations) and 321113 (sawmills) is 500 or fewer persons employed by the operation.[1] It is estimated that more than 90 percent of nursery operations located in these States are small operations with annual receipts of less than $750,000 (including nursery operations that sell deciduous shade trees).[2] It is reasonable to assume that nearly all sawmills and logging operations have 500 or fewer employees, since more then 80 percent of the sawmills located in these States have fewer than 20 employees and each State has an average of 14–15 employees per operation.[3]

In Indiana, State officials estimate that the interim rule will affect a total of 12 operations. In LaGrange County, two production nurseries and six sawmills are located within quarantined areas. In Steuben County, four sawmills are located within quarantined areas. A nursery operation located within the quarantined area of Steuben County is not a grower of any species of ash, and, therefore, is not affected by the quarantine.

In Ohio, State officials estimate that approximately 2,520 operations are located within the quarantined areas of the 4 counties. Among the operations located within these quarantined counties are approximately 250 nurseries, nursery stock dealers, and landscapers, as well as 50 logging operations, 100 firewood dealers, 10 sawmills, 10 pallet and other wood product manufacturers, and roughly 2,000 woodlot owners.

In Michigan, State officials estimate that there are approximately 7,000 to 8,000 nursery operations located within the State's quarantined areas; however, the rule only affects the ash nursery stock handled by these operations. In addition, it is estimated that approximately 5,000 to 6,000 sawmills and firewood dealers are located within or near quarantined areas of the State.

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles lead us to believe that any economic effects on affected small entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

[1] Based upon 2002 Census of Agriculture—State data and the ''Small Business Size Standards by NAICS Industry,'' Code of Federal Regulations, Title 13, Chapter I.

[2] ''Nursery Crops: 2003 Summary'' National Agricultural Statistics Service, USDA July 2004.

[3] ''2002 Economic Census: Manufacturing'' U.S. Census Bureau, July 2005 (Indiana, Michigan, and Ohio geographical reports).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule establishing ''Subpart—Emerald Ash Borer'' (§§ 301.53–1 through 301.53–9) that was published at 68 FR 59082–59091 on October 14, 2003, as amended by the interim rules published at 70 FR 249–253 on January 4, 2005, and 70 FR 10315–10318 on March 3, 2005.

Done in Washington, DC, this 20th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2865 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23271; Airspace Docket No. 05–AWP–15]

RIN 2120–AA66

Establishment of Class E Enroute Domestic Airspace Area, Vandenberg AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments; correction.

SUMMARY: This action corrects the heading of the legal description and changes the effective date of a direct final rule published in the **Federal Register** on March 7, 2006 (71 FR 11297), Airspace Docket No. 05–AWP–15. In that rule, the heading of the legal description reads ''Lompoc, CA, Vandenberg AFB [Established]'' and will change to ''AWP CA E6 Lompoc, CA [New]''. Also the effective date was inadvertently published as July 6, 2006. This action changes the effective date to June 8, 2006.

DATES: *Effective Date:* 0901 UTC [March 24, 2006.]

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

On March 7, 2006, a direct final rule was published in the **Federal Register** (71 FR 11297), Airspace Docket No. 05–AWP–15. This rule established a Class E enroute domestic airspace area, Vandenberg AFB, CA, to replace existing Class G uncontrolled airspace. In that rule, the heading of the legal description reads ''Lompoc, CA, Vandenberg AFB [Established]'' and will change to ''AWP CA E6 Lompoc, CA [New]''. Also the effective date was inadvertently published as July 6, 2006. This action changes the effective date to June 8, 2006.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the heading of the legal description for Airspace Docket No. 05–AWP–15, as published in the **Federal Register** on March 7, 2006 (71 FR 11297), is hereby changed to ''AWP CA E6 Lompoc, CA [New]'', and the effective date is changed from July 6, 2006, to June 8, 2006.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Los Angeles, California, on March 14, 2006.

Leonard A. Mobley,

Manager, Airspace Branch AWP–520, Western Terminal Operations.

[FR Doc. 06–2879 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23184; Airspace Docket No. 05–AWP–14]

Modification of Class E Airspace; Palm Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Palm Springs, CA. The establishment of an Area Navigation (RNAV) Required Navigation Performance (RNP) Y Instrument Approach Procedures (IAP) to Runway (RWY) 13R and 31L to Palm Springs International Airport, Palm Springs, CA 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 aircraft executing this RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Palm Springs International Airport, Palm Springs, CA.

EFFECTIVE DATE: 0901 UTC June 8, 2006.

FOR FURTHER INFORMATION CONTACT: The Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On January 6, 2006, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Palm Springs, CA (06 FR 889). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport, Palm Springs, 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 7400.9N, dated September 1, 2005, and effective September 16, 2005, 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 modifies the Class E airspace area at Palm Springs, CA. The establishment of a RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport, Palm Springs, 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; 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; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9 N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, 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 Palm Springs, CA [Modify]

Palm Springs, CA

(Lat. 33°49′46″ N., long. 116°30′24″ W.)

That airspace extending upward from 700 feet above the surface beginning at the lat. 34°05′00″ N., long. 116°34′03″ W.; to lat. 34°08′00″ N., long. 116°30′00″ W.; to lat. 34°06′42″ N., long. 116°28′49″ W.; to lat. 34°03′00″ N., long. 116°31′00″ W.; to lat. 33°42′45″ N., long. 115°53′34″ W.; to lat. 33°26′00″ N., long. 116°09′33″ W.; to lat. 33°55′00″ N., long. 116°46′03″ W., to the point of beginning.

* * * * *

Issued in Los Angeles, California, on March 3, 2006.

Stephen J. Lloyd,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–2880 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 1997N–0484S]

RIN 0910–AB27

Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that published in the **Federal Register** of May 25, 2004 (69 FR 29786). The final rule required human cell, tissue, and cellular and tissue-based product (HCT/P) establishments to screen and test cell and tissue donors for risk factors for, and clinical evidence of, relevant communicable disease agents and diseases. The document was published with an error in the codified section. This document corrects that error.

DATES: Effective on March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of this correction require HCT/P establishments to screen and test cell and tissue donors for risk factors for, and clinical evidence of, relevant communicable disease agents and diseases. The final regulations incorrectly list a cross-reference in 21 CFR 1271.75(d)(1). This error may prove to be misleading because it inaccurately limits a referenced provision. Therefore, the error needs to be corrected.

List of Subjects in 21 CFR Part 1271

Biologics, Drugs, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

■ Accordingly, 21 CFR part 1271 is corrected by making the following correcting amendment:

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS

■ 1. The authority citation for part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 2. Amend paragraph (d)(1) of § 1271.75 by removing ''(a)(1)(i)'' and adding in its place ''(a)(1)''.

Dated: March 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–2841 Filed 3–23–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9256]

RIN 1545–BD97

Revised Regulations Concerning Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 417(a)(3) of the Internal Revenue Code concerning content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: *Effective date:* These regulations are effective March 24, 2006.

Applicability dates: The changes to § 1.401(a)–20, A–36, and § 1.417(a)(3)–1 apply as if they had been included in TD 9099 (68 FR 70141). The change to § 1.401(a)–20, Q&A–16, applies as if it had been included in TD 8219 (53 FR 31837).

FOR FURTHER INFORMATION CONTACT: Bruce Perlin or Linda Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been previously reviewed and approved

by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0928.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 417(a) provides rules under which a participant (with spousal consent) may elect to receive benefits in a form other than a qualified joint and survivor annuity (QJSA), including rules relating to required distributions. Specifically, section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date, a written explanation that includes the following information: (1) The terms and conditions of the QJSA; (2) the participant's right to make an election to waive the QJSA form of benefit; (3) the effect of such an election; (4) the rights of the participant's spouse; and (5) the right to revoke an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829), as subsequently amended, provides rules that are parallel to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code (Code). In particular, section 205(c)(3) of ERISA provides a rule parallel to the rule of section 417(a)(3) of the Code.

Section 1.401(a)–20, which provides rules governing the requirements for a waiver of the QJSA, was published in the **Federal Register** on August 19, 1988 (TD 8219) (53 FR 31837), effective August 22, 1988. Section 1.401(a)–20, Q&A–36, as published in 1988, set forth requirements for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Under those requirements, such a written explanation must contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (e.g., the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)–20, Q&A–36, as published in 1988, provided that the written explanation must comply with the requirements set forth in § 1.401(a)–11(c)(3). Section 1.401(a)–11(c)(3), which was issued prior to the enactment of section 417, provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)–11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. See § 1.401(a)–20, Q&A–16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment of a form of benefit that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, see section 417(e)(3) and § 1.417(e)–1(d) for actuarial assumptions required for use in certain present value calculations.

Final regulations under section 417(a)(3) regarding disclosure of the relative value and financial effect of optional forms of benefit as part of QJSA explanations provided to participants receiving qualified retirement plan distributions were published in the **Federal Register** on December 17, 2003. See § 1.417(a)(3)–1 (68 FR 70141). The 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after October 1, 2004.

The 2003 regulations were issued in response to concerns that, in certain cases, the information provided to participants under section 417(a)(3) regarding available distribution forms pursuant to § 1.401(a)–20, Q&A–36, did not adequately enable them to compare those distribution forms without professional advice. In particular, participants who were eligible for early retirement benefits in the form of both subsidized annuity distributions and unsubsidized single-sum distributions may have been receiving explanations that do not adequately disclose the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of the annuity payments would not adequately enable a participant to make an informed comparison of the relative values of those distribution forms. The 2003 regulations addressed this problem, as well as the problem of disclosure in other cases where there are significant differences in value among optional forms, and also clarified the rules regarding the disclosure of the financial effect of benefit payments.

A number of commentators requested that the effective date of the 2003 regulations be postponed. Among the reasons cited was the need in some plans for sponsors to complete an extensive review and analysis of optional forms of benefit in order to prepare proper comparisons of the relative values of those optional forms to the QJSA. After consideration of these comments, the IRS issued Announcement 2004–58 (2004–29 I.R.B. 66), which postponed the effective date of the 2003 regulations under § 1.417(a)(3)–1 for certain QJSA explanations.

Consistent with Announcement 2004–58, proposed regulations were published in the **Federal Register** on January 28, 2005, to provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. On August 24, 2005, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury decision. The revisions are discussed below.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over ERISA provisions that are parallel to the Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of the parallel rules in section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Explanation of Provisions

As provided in the 2005 proposed regulations, these final regulations provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. However, these regulations retain the effective date for § 1.417(a)(3)–1 under the 2003 regulations for explanations with

respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. Thus, for example, a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with § 1.417(a)(3)–1 to the extent that the plan provides for payment to that participant in the form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA. If the October 1, 2004, effective date applies to an optional form of benefit, the plan must disclose the relative value of the optional form of benefit compared to the value of the QJSA for the participant even if the plan provides a disclosure of relative values that is not tailored to the participant's marital status. Accordingly, if a plan provides a relative value disclosure based on the single life annuity (the QJSA for a single participant) to a married participant, the plan must also include a comparison of the value of the QJSA to the value of the single life annuity.

To illustrate the application of the modified effective date of § 1.417(a)(3)–1, the 2005 proposed regulations contained a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3), and included a social security level income option in that list.[1] A social security level income option is the payment of a participant's benefit in the form of an annuity with larger payments in earlier years before an assumed social security commencement age to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. Several commentators expressed disagreement with the inclusion of social security level income options in the list of benefits that are subject to the minimum present value requirements of section 417(e)(3), based on their view that a social security level income option is not subject to those requirements. Commentators requested that this interpretation be withdrawn or, alternatively, that it be the subject of a separate rulemaking process to allow adequate notice and comment. In addition, commentators objected to the placement of these examples in the effective date provisions of the relative value regulations rather than in the regulations regarding the minimum present value requirements of section 417(e)(3).

These final regulations do not include a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3) in the provisions regarding the effective date of these regulations. The omission of this list reflects agreement with commentators that this is not the appropriate placement for guidance regarding the minimum present value requirements of section 417(e)(3). Section 1.417(e)–1(d)(6) identifies the types of payments that are not subject to the minimum present value requirements of section 417(e)(3). Under § 1.417(e)–1(d)(6)(ii)(B), the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that decreases during the life of the participant merely because of the cessation or reduction of social security supplements. However, no such exemption applies to social security level income options.

As under the 2005 proposed regulations, these final regulations include a special rule that enables a plan to use the delayed effective date rule even if there are minor differences between the value of an optional form and the value of the QJSA for a married participant that are caused by the calculation of the amount of the optional form of benefit based on the life annuity rather than on the QJSA. Under this special rule, solely for purposes of the effective date provisions, the actuarial present value of an optional form is treated as not being less than the actuarial present value of the QJSA if the following two conditions are met. First, using the applicable interest rate and applicable mortality table under § 1.417(e)–1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant. Second, using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

Like the 2005 proposed regulations, these final regulations modify the 2003 regulations in two other respects. First, for purposes of disclosing the normal form of benefit as part of a disclosure made in the form of generally applicable information, reasonable estimates of the type permitted to be used to disclose participant-specific information may be used to determine the normal form of benefit, but only if the plan follows the requirements applicable to reasonable estimates used in disclosing participant-specific information (such as offering a more precise calculation upon request and revising previously offered information consistent with the more precise information). Second, a QJSA explanation does not fail to satisfy the requirements for QJSA explanations made in the form of disclosures of generally applicable information merely because the QJSA explanation contains an item of participant-specific information in place of the corresponding generally applicable information.

In response to the 2005 proposed regulations, commentators requested a number of other modifications to the 2003 regulations that were not addressed in the 2005 proposed regulations. These regulations adopt a number of these suggestions.

To address questions raised by commentators, these regulations clarify which optional forms of benefit that are available with retroactive annuity starting dates are required to be covered in a QJSA explanation. Under these regulations, a QJSA explanation must provide the required information with respect to each of the optional forms of benefit presently available to the participant (i.e., optional forms of benefit for which the QJSA explanation applies that have an annuity starting date after the providing of the QJSA explanation and optional forms of benefit with retroactive annuity starting dates that are available with payments commencing at that same time). In addition, these regulations clarify that the disclosure of the financial effect of an optional form of benefit (including a benefit available with a retroactive annuity starting date) must describe the amounts and timing of payments to the participant under the form of benefit during the participant's lifetime, and the amounts and timing of payments after the death of the participant.

Some commentators expressed concerns over the fact that the regulations permit any optional form of benefit that is at least 95% as valuable as the QJSA for a married participant to

[1] Section 1.417(e)–1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits. A social security supplement is defined in § 1.411(a)–7(c)(4) as a benefit for plan participants that commences before the age and terminates at the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. Under section 411(a)(9) and § 1.411(a)–7(c)(4), a plan's early retirement benefit (and, therefore, a plan's normal retirement benefit) is determined without regard to a social security supplement.

be described as approximately equal in value to the QJSA, even if that optional form of benefit is substantially more valuable than the QJSA. These commentators expressed concerns regarding compliance with the standards of professional conduct for actuaries and recommended that the regulations prohibit employers from providing information to participants that is misleading. Commentators also objected to the difference between this rule and the rule for disclosures of relative values in comparison to the single life annuity, under which optional forms of benefit can be disclosed as approximately equal in value to the single life annuity only if all optional forms are within a range of 95% to 102.5% of the value of the single life annuity.

To address these concerns, these regulations provide that the relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA and no greater than 105% of the actuarial present value of the QJSA is permitted to be described by stating that these optional forms of benefit are approximately equal in value to the QJSA, or that all of these forms of benefit and the QJSA are approximately equal in value. Thus, optional forms of benefit that have greater differences in present value may not be described as having approximately the same value. Moreover, this rule applies regardless of whether the comparison is made to the QJSA for married participants or the QJSA for unmarried participants. To give employers sufficient time to perform the additional calculations that may be required to implement this rule, a special effective date applies so that this change to the regulations need not be applied for disclosures made before 2007.

Some commentators requested clarification regarding the reasonable actuarial assumptions that can be used to compare the value of an optional form of benefit to the value of the QJSA if that optional form of benefit is not subject to the minimum present value requirements of section 417(e)(3). In response, these regulations clarify that, for this purpose, the reasonableness of interest and mortality assumptions is determined without regard to the circumstances of the individual participant. In addition, the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) are considered reasonable actuarial assumptions for this purpose and thus are permitted (but not required) to be used.

Commentators requested that simplified disclosures of financial effect and relative value be permitted under certain circumstances to enable employers to make that information more useful for participants in certain cases in which the plan would otherwise be required to provide a confusing array of information to a participant. To address these concerns, these regulations permit simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit, and also permit simplified presentations of relative value and financial effect for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

If a plan offers a significant number of substantially similar optional forms of benefit and disclosing the financial effect and relative value of each such optional form of benefit would provide a level of detail that could be overwhelming rather than helpful to participants, then the financial effect and relative value of those optional forms of benefit can be disclosed by explaining the relative value and financial effect of a representative range of examples of those optional forms of benefit. For purposes of this rule, optional forms of benefit are substantially similar if those optional forms of benefit are identical except for a particular feature or features (with associated adjustment factors) and the feature or features vary linearly. For example, if a plan offers joint and survivor annuity options with survivor payments available in all whole number percentages between 50% and 100%, those joint and survivor annuity options are substantially similar. Similarly, if a participant is entitled under the plan to receive a particular form of benefit with an annuity starting date that is the first day of any month beginning three years before commencement of a distribution and ending on the date of commencement of the distribution, those forms of benefit are substantially similar.

A range of examples with respect to substantially similar optional forms of benefit as permitted under this rule is representative only if it includes examples illustrating the relative value and financial effect of the optional forms of benefit that reflect each varying feature at both extremes of its linear range, plus at least one example illustrating the relative value and financial effect of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate a pattern of variation in relative value with respect to a varying feature, examples that are sufficient to illustrate the pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in all whole number percentages between 50% and 100%, and if all such optional forms of benefit would be permitted to be described as approximately equal in value, the plan could satisfy the requirement to disclose the relative value and financial effect of a representative range of examples of those optional forms of benefit by disclosing the relative value and financial effect with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and joint and 100% survivor annuity.

If the plan permits a participant to make separate benefit elections with respect to two or more portions of the participant's benefit, the description of the financial effect and relative values of optional forms of benefit can be made separately for each such portion of the benefit, rather than for each optional form of benefit (i.e., each combination of possible elections).

As under the 2005 proposed regulations, these regulations include a change to § 1.401(a)–20, Q&A–16, to clarify the interaction of the rule prohibiting a plan from providing an option to a married individual that is worth more than the QJSA with the requirement that certain optional forms of benefit be calculated using specified actuarial assumptions. Under that clarification, a plan would not fail to satisfy the requirements of § 1.401(a)–20, Q&A–16, merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using actuarial assumptions set forth in section 417(e)(3) (i.e., the applicable interest rate and, for periods that are required, the applicable mortality table).

Dates of Applicability

As discussed above under the heading *Explanation of Provisions,* these regulations retain the effective date for § 1.417(a)(3)–1 under the 2003 regulations (i.e., QJSA explanations with respect to annuity starting dates on or after October 1, 2004) for explanations with respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. See § 1.417(a)(3)–1(f)(2). Thus, for example,

a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with § 1.417(a)(3)–1 to the extent that the plan provides for payment to that participant in the form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA.

As under the 2005 proposed regulations, these final regulations defer the effective date of the 2003 regulations with respect to all other QJSA explanations. Under these final regulations, the 2003 regulations (as amended by these regulations) generally apply to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006. However, the change to § 1.417(a)(3)–1(c)(2)(iii)(C) (relating to disclosures of optional forms of benefit that are approximately equal in value to the QJSA) is not required to be applied to QJSA explanations provided before January 1, 2007.

A reasonable, good faith effort to comply with these regulations will be deemed to satisfy the requirements of these regulations for QJSA explanations provided before January 1, 2007 (except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of § 1.417(a)(3)–1(f)(2)). For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with the 2003 regulations.

These regulations do not change the effective date of the 2003 regulations with respect to QPSA explanations. Thus, the 2003 regulations continue to apply to any QPSA explanation provided on or after July 1, 2004.

The change to § 1.401(a)–20, Q&A–16 (clarifying that a plan does not fail to satisfy the requirements of Q&A–16 as a result of complying with the minimum present value requirements of section 417(e)(3)), applies as if it had been included in the 1988 regulations (TD 8219, 53 FR 31837).

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 is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Bruce Perlin and Linda S.F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.401(a)–20 is amended by:

■ 1. Adding a sentence to the end of Q&A–16.

■ 2. Adding a sentence to the end of Q&A–36.

The additions read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A–16 * * * A plan does not fail to satisfy the requirements of this Q&A–16 merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using the applicable interest rate (and, for periods when required, the applicable mortality table) under section 417(e)(3).

* * * * *

A–36 * * * However, the rules of § 1.401(a)–20, Q&A–36, as it appeared in 26 CFR part 1 revised April 1, 2003, apply to the explanation of a QJSA under section 417(a)(3) for an annuity starting date prior to February 1, 2006.

* * * * *

■ **Par. 3.** Section 1.417(a)(3)–1 is amended by:

■ 1. Revising the parenthetical in paragraph (c)(1).

■ 2. Revising the parenthetical in paragraph (c)(1)(iii).

■ 3. Removing the language ''paragraph (c)(3)(iii) of'' from paragraph (c)(2)(ii)(A).

■ 4. Revising paragraph (c)(2)(iii)(C).

■ 6. Adding two sentences to the end of paragraph (c)(2)(iv)(B).

■ 7. Adding paragraph (c)(5).

■ 8. Adding a sentence to the end of paragraph (d)(2)(ii).

■ 9. Adding paragraph (d)(5).

■ 10. Revising paragraph (ii) of *Example (4)* in paragraph (e) by removing the language ''paragraph (c)(2)(ii) of this section'' and adding ''paragraph (c)(2)(iii) of this section'' in its place.

■ 11. Revising paragraph (f).

The additions and revisions read as follows:

§ 1.417(a)(3)–1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

(c) *Participant-specific information required to be provided*—(1) *In general.* * * * (i.e., optional forms of benefit for which the QJSA explanation applies that have an annuity starting date after the providing of the QJSA explanation and optional forms of benefit with retroactive annuity starting dates that are available with payments commencing at that same time) * * *

* * * * *

(iii) * * * (i.e., the amounts and timing of payments to the participant under the form of benefit during the participant's lifetime, and the amounts and timing of payments after the death of the participant) * * *

(2) * * *

(iii) * * *

(C) *Special rule for optional forms of benefit that are close in value to the QJSA.* The relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA and no greater than 105% of the actuarial present value of the QJSA is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value.

* * * * *

(iv) * * *

(B) * * * For this purpose, the reasonableness of interest and mortality assumptions is determined without regard to the circumstances of the individual participant. In addition, the

applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) are considered reasonable actuarial assumptions for this purpose and thus are permitted (but not required) to be used.

* * * * *

(5) *Simplified presentations of financial effect and relative value to enhance clarity for participants*—(i) *In general.* This paragraph (c)(5) permits certain simplified presentations of financial effect and relative value of optional forms of benefit to permit more useful presentations of information to be provided to participants in certain cases in which a plan offers a range of optional forms of benefit. Paragraph (c)(5)(ii) of this section permits simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit. Paragraph (c)(5)(iii) of this section permits simplified presentations of financial effect and relative value for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

(ii) *Disclosure for plans offering a significant number of substantially similar optional forms of benefit*—(A) *In general.* If a plan offers a significant number of substantially similar optional forms of benefit within the meaning of paragraph (c)(5)(ii)(B) of this section and disclosing the financial effect and relative value of each such optional form of benefit would provide a level of detail that could be overwhelming rather than helpful to participants, then the financial effect and relative value of those optional forms of benefit can be disclosed by disclosing the relative value and financial effect of a representative range of examples of those optional forms of benefit as described in paragraph (c)(5)(ii)(C) of this section if the requirements of paragraph (c)(5)(ii)(D) of this section (relating to additional information available upon request) are satisfied.

(B) *Substantially similar optional forms of benefit.* For purposes of this paragraph (c)(5)(ii), optional forms of benefit are substantially similar if those optional forms of benefit are identical except for a particular feature or features (with associated adjustment factors) and the feature or features vary linearly. For example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, those joint and survivor annuity options are substantially similar optional forms of benefit. Similarly, a participant is entitled under the plan to receive a particular form of benefit with an annuity starting date that is the first day of any month beginning three years before commencement of a distribution and ending on the date of commencement of the distribution, those forms of benefit are substantially similar optional forms of benefit.

(C) *Representative range of examples.* A range of examples with respect to substantially similar optional forms of benefit as permitted under this paragraph (c)(5) is representative only if it includes examples illustrating the financial effect and relative value of the optional forms of benefit that reflect each varying feature at both extremes of its linear range, plus at least one example illustrating the financial effect and relative value of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate the pattern of variation in relative value with respect to a varying feature, examples sufficient to illustrate such pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, and if all such optional forms of benefit would be permitted to be disclosed as approximately equal in value as described in paragraph (c)(5)(ii)(B) of this section, the plan could satisfy the requirement to disclose the financial effect and relative value of a representative range of examples of those optional forms of benefit by disclosing the financial effect and relative value with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and the joint and 100% survivor annuity.

(D) *Requirement to provide information with respect to other optional forms of benefit upon request.* If a QJSA explanation discloses the financial effect and relative value of substantially similar optional forms of benefit by disclosing the financial effect and relative value of a representative range of examples in accordance with this paragraph (c)(5)(ii), the QJSA explanation must explain that the plan will, upon the request of the participant, disclose the financial effect and relative value of any particular optional form of benefit from among the substantially similar optional forms of benefit and the plan must provide the participant with the financial effect and relative value of any such optional form of benefit if the participant so requests.

(iii) *Separate presentations permitted for elections that apply to parts of a benefit.* If the plan permits the participant to make separate benefit elections with respect to two or more portions of the participant's benefit, the description of the financial effect and relative values of optional forms of benefit can be made separately for each such portion of the benefit, rather than for each optional form of benefit (i.e., each combination of possible elections).

(d) * * *

(2) * * *

(ii) *Actual benefit must be disclosed.* * * * Reasonable estimates of the type described in paragraph (c)(3)(i) of this section may be used to determine the amount payable to the participant under the normal form of benefit for purposes of this paragraph (d)(2)(ii) if the requirements of paragraphs (c)(3)(ii) and (iii) of this section are satisfied with respect to those estimates.

* * * * *

(5) *Use of participant-specific information in generalized notice.* A QJSA explanation does not fail to satisfy the requirements of this paragraph (d) merely because it contains an item of participant-specific information in place of the corresponding generally applicable information.

* * * * *

(f) *Effective date*—(1) *General effective date for QJSA explanations*—(i) *In general.* Except as otherwise provided in this paragraph (f), this section applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006.

(ii) *Reasonable, good faith transition rule.* Except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of paragraph (f)(2) of this section, a reasonable, good faith effort to comply with these regulations will be deemed to satisfy the requirements of these regulations for QJSA explanations provided before January 1, 2007, with respect to distributions with annuity starting dates that are on or after February 1, 2006. For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with § 1.417(a)(3)–1 as it appeared in 26 CFR part 1 revised April 1, 2004.

(2) *Special effective date for certain QJSA explanations*—(i) *Application to QJSA explanations with respect to certain optional forms that are less valuable than the QJSA.* This section also applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, if the actuarial present value of any optional form of benefit that is

subject to the requirements of section 417(e)(3) is less than the actuarial present value (as determined under § 1.417(e)–1(d)) of the QJSA. For purposes of this paragraph (f)(2)(i), the actuarial present value of an optional form is treated as not less than the actuarial present value of the QJSA if—

(A) Using the applicable interest rate and applicable mortality table under § 1.417(e)–1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant; and

(B) Using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

(ii) *Requirement to disclose differences in value for certain optional forms.* A QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, is only required to be provided under this section with respect to—

(A) An optional form of benefit that is subject to the requirements of section 417(e)(3) and that has an actuarial present value that is less than the actuarial present value of the QJSA (as described in paragraph (f)(2)(i) of this section); and

(B) The QJSA (determined without application of paragraph (c)(2)(ii) of this section).

(iii) *Application to QJSA explanations with respect to optional forms that are approximately equal in value to the QJSA.* Paragraph (c)(2)(iii)(C) of this section, relating to disclosures of optional forms of benefit that are permitted to be described as approximately equal in value to the QJSA, is not applicable to a QJSA explanation provided before January 1, 2007. However, § 1.417(a)(3)–1(c)(2)(iii)(C), as it appeared in 26 CFR part 1 revised April 1, 2004, applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and that is provided before January 1, 2007.

(3) *Annuity starting date.* For purposes of paragraphs (f)(1) and (2) of this section, in the case of a retroactive annuity starting date under section 417(a)(7), as described in § 1.417(e)–1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date.

(4) *Effective date for QPSA explanations.* This section applies to any QPSA explanation provided on or after July 1, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 15, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–2844 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–079]

RIN 1625–AA09

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of March 1, 2006, a temporary final rule amending bridge regulations. That rule contained the wrong effective date. This document corrects that error.

DATES: This correction is effective on April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The Coast Guard published in the **Federal Register** of March 1, 2006, a temporary final rule amending bridge regulations. That rule contained the wrong effective date. This document corrects that error.

In rule FR Doc. 06–1815 published on March 1, 2006, (71 FR 10433) make the following correction. On page 10433, in the third column, change the **DATES** section to read as follows: This temporary final rule is effective from April 17, 2006, through March 1, 2009.

Dated: March 14, 2006.

Larry L. Hereth,

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

[FR Doc. 06–2873 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–063]

RIN 1625–AA09

Drawbridge Operation Regulation; Boot Key Harbor, Marathon, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Boot Key Harbor Bridge, mile 0.13, between Marathon and Boot Key, Monroe County, Florida. Due to the amount of vehicle traffic and the lack of openings during the proposed time period, this action will improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic. This rule will allow the bridge to open as necessary on the hour between the hours of 7 a.m. to 7 p.m. At all other times, the bridge will open on demand following a one-hour notification to the bridge tender. The draw shall open as soon as practicable for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

DATES: This rule is effective April 24, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD07–05–063 and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Suite 432, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (dpb), Seventh Coast Guard District, maintains the public docket for this rulemaking.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 20, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Marathon, FL, in the **Federal Register** (70 FR 41648). We received 4 letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The operation of the Boot Key Harbor bridge, mile 0.13, at Marathon, is governed by 33 CFR 117.272, which requires the draw to open on signal; except that during the evening hours from 10 p.m. to 6 a.m., the draw shall open on signal if at least two hours notice is given. The City of Marathon requested that the Coast Guard temporarily change the operating schedule to ensure worker safety, as the bridge required prompt corrective repairs and renovation. An analysis of the bridge logs showed an average of only 12.2 openings per week over a one-year period during the hours of 7 a.m. through 7 p.m. In light of this information, the bridge owner amended the initial request, asking the Coast Guard to permanently change the regulation governing the Boot Key Harbor Bridge.

Discussion of Comments and Changes

We received 4 comments on the NPRM: One commented that the proposed undertaking will have no effect on historic properties. Another comment was from the City of Marathon asking that the 10-minute response time proposed in the NPRM be kept at the current one-hour period for on demand requests to open the bridge. Two comments were against the proposed change due to a potential situation which may cause serious unsafe conditions.

This regulation takes into consideration a potential situation which may cause unsafe conditions by stating that the draw shall open as soon as practicable for vessels in a situation where a delay would endanger life or property. Additionally, the City of Marathon's comments have been incorporated into this final rule. Instead of a 10-minute response time to open the bridge, the bridge will maintain its current one-hour response time for on demand requests to open the bridge outside the hours of 7 a.m. to 7 p.m.

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). Vessel traffic will be able to transit through the open bridge with the exception of the short closure periods.

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.272 to read as follows:

§ 117.272 Boot Key Harbor.

The draw of the Boot Key Harbor drawbridge, mile 0.13, between Marathon and Boot Key, will open as necessary on the hour between the hours of 7 a.m. to 7 p.m. At all other times, the bridge will open following a one hour notification to the bridge tender by calling the posted cell phone number. The draw shall open on demand and as soon as practicable for the passage of tugs with tows, public vessels of the United States and vessels whereby a delay would endanger life or property.

Dated: March 9, 2006.

D.B. Peterman,

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

[FR Doc. 06–2874 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 2006–23839]

RIN 2135–AA23

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2006 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff for full or partial transit of the Seaway will apply in the U.S. (See Supplementary Information.) The Tariff of Tolls is in effect in Canada. For consistency, because these are, under international agreement, joint regulations, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective upon publication.

DATES: This rule is effective on March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising 33 CFR 402.8, ''Schedule of Tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2006 navigation season. Additionally, the SLSDC is revising 33 CFR 402.3, ''Interpretation'', and 33 CFR 402.4, ''Tolls'', to provide interpretations of two charges for vessels carrying new cargo on the Welland Canal and the MLO Section of the Seaway. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment was necessary on these amendments.

The SLSDC is amending 33 CFR 402.8, ''Schedule of Tolls'', to increase the minimum charge per vessel per lock for full or partial transit of the Seaway from $20.00 to $20.40. This charge is for vessels that are not pleasure craft or subject in Canada to the tolls under items 1 and 2 of the Tariff. This increase is due to higher operating costs at the locks. Since this amendment would be applicable in the United States, interested parties were afforded an opportunity to comment on it in a Notice of Proposed Rulemaking published on February 14, 2006 (71 FR 7701). No comments were received.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the

Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

■ Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. Section 402.3 is amended by redesignating paragraphs (k) through (n) as (m) through (p) and revising newly designated paragraphs (m) through (p), and by adding new paragraphs (k) and (l) to read as follows:

§ 402.3 Interpretation.

* * * * *

(k) *New cargo—MLO Section* means either containerized cargo or cargo which has not moved through the MLO Section in an average annual amount, over the navigation seasons 2001–2002–2003, greater than 10,000 metric tons.

(l) *New cargo—Welland Canal* means either containerized cargo or cargo which has not moved through the Welland Canal in an average annual amount, over the navigation seasons 2001–2002–2003, greater than 10,000 metric tons.

(m) *Passenger* means a person being transported through the Seaway who has paid a fare for passage.

(n) *Pleasure craft* means a vessel, however propelled, that is used exclusively for pleasure and does not carry passengers.

(o) *Seaway* includes all facilities and services authorized under Public Law 358, 83rd Congress, May 13, 1954, enacted by the Congress of the United States, as amended, (33 U.S.C. 981, *et seq.*) and the meaning ascribed to it under the Canada Marine Act.

(p) *Vessel* (''ship'' in Canada) means every type of craft used as a means of transportation on water, except a vessel owned or employed by the Manager or the Corporation.

■ 3. Section 402.4 is amended by adding paragraphs (d) through (f) to read as follows:

§ 402.4 Tolls.

* * * * *

(d) As part of the fees applicable under the New Cargo—Welland Canal and the New Cargo—MLO Section, once a cargo has qualified as new cargo, it will remain qualified for the navigation seasons 2006 and 2007.

(e) For a transit to be accepted under the New Cargo—Welland Canal or the New Cargo—MLO Section, more than 50% of the cargo carried on that transit for each section must qualify as new cargo.

(f) Barges transiting the Welland Canal together as one unit pulled by the same tug or tugs shall, for the purpose of calculating lockage fees, be deemed to be a combination unit and will pay lockage fees as a single barge.

■ 4. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Column 1 Item—Description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0947	0.1537.
(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(a) bulk cargo	0.9816	0.6504.
(b) general cargo	2.3651	1.0408.
(c) steel slab	2.1405	0.7451.
(d) containerized cargo	0.9816	0.6504.
(e) government aid cargo	N/A	N/A.
(f) grain	0.6030	0.6504.
(g) coal	0.5795	0.6504.
(3) a charge per passenger per lock	1.3954	1.3954.

Column 1 Item—Description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
(4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:		
(a) loaded	N/A	519.40.
(b) in ballast	N/A	383.75.
2. Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).	13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).
3. Minimum charge per ship per lock transited for full or partial transit of the Seaway.	20.40	20.40.
4. A rebate applicable to the rates of item 1 to 3	N/A	N/A.
5. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [1].	20.00	20.00.
6. Subject to item 3, in lieu of item 1(4), for vessel carrying new cargo on the Welland Canal or returning ballast after carrying new cargo on the Welland Canal, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1):		
(a) loaded	N/A	0.1530.
(b) in ballast	N/A	0.1122.
7. Subject to item 3, in lieu of item 1(1), for vessel carrying new cargo on the MLO section or returning ballast after carrying new cargo on the MLO Section, a charge per gross registered ton of the ship, the gross registered tonnage being calculated according to item 1(1).	0.0000	N/A.

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $25 U.S., or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian Share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC, on March 17, 2006.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 06–2845 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–61–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1260

RIN 3095–AB38

Declassification of National Security Information

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule updates NARA's regulations related to declassification of classified national security information in records transferred to NARA's legal custody. The rule incorporates changes resulting from amendments to Executive Order 12958, Classified National Security Information, as amended. These changes include establishing procedures for the automatic declassification of records in NARA's legal custody and revising requirements for reclassification of information to meet the provisions of EO 12958, as amended. This rule will affect members of the public and Federal agencies.

DATES: Effective April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1801.

SUPPLEMENTARY INFORMATION: The proposed rule was originally published in the August 12, 2005, **Federal Register** (70 FR 47161) for a sixty day comment period. We notified several researcher organizations about the proposed rule and posted a notice about it on our Web site, *http://www.archives.gov*. NARA received eight responses to the proposed rule. Two were from individuals, one was from a public interest group, and the others were from government agencies. Two of the responses from government agencies were no comments.

One individual expressed concern about actions of the George W. Bush administration, including that an Executive Order (EO) has been used to permanently seal records of the two Bush presidencies. This issue is beyond the purview of EO 12958, as amended. The other individual's comment objected to the provisions in subpart E regarding reclassification. He stated that there is no urgent need for alteration of current processes available to the agencies involved in the safeguarding of our nation's security interests. However, this rule brings NARA policy into conformity with provisions of EO 12958, as amended, and therefore, his comments cannot be accepted.

Two comments questioned the concept of ''integral file block.'' One commenter asked if the term was new or had been used previously in a records management environment. The other commenter was concerned that an integral file block could contain records spanning an indefinite period of time—possibly decades—and this would effectively prevent the timely declassification of historically significant information that would otherwise be eligible for release. The commenter recommended that NARA adopt regulations that would provide for review of integral file blocks that span more than eight years to determine whether the integral file block could be broken up for the purpose of declassification while maintaining the integrity of the records.

Integral file blocking is a long standing practice in records management. The concept was introduced into the EO to promote better, more efficient reviews. For example, rather than review records in any one box multiple times on a year by year basis, an agency can review all records in the box at one time. Records are handled less frequently and are reviewed in relationship to each other, enhancing the possibility of contextual decisions. Most records are reviewed by the originating agencies and NARA

cannot control how they apply the integral file block concept. That is a matter for the originating agencies' record management personnel and for Information Security Oversight Office (ISOO) oversight of agency declassification programs. Therefore, we do not accept the recommendation to adopt regulations to review integral file blocks spanning more than eight years to see if they can be broken up to facilitate declassification.

The same commenter recommended adding language to § 1260.52 to explain a requester's right to appeal to the Interagency Security Classification Appeals Panel (ISCAP) if an agency fails to respond to a mandatory review request within one year of the date of the request and further to add similar language to §§ 1260.54 and 1260.55 to inform an appellant of the right to appeal to the ISCAP if a final decision on the appeal is not made within 180 days of the date of the appeal. NARA accepts these recommendations and has amended §§ 1260.52, 1260.54, and 1260.55 to include additional language.

The same commenter also recommended amending § 1260.70 involving reclassification. The Order states that in order for information to be reclassified, it must be ''reasonably recoverable.'' The commenter suggested including a definition of ''reasonably recoverable'' in order to better inform agencies of the circumstances under which reclassification may be inappropriate and that the Archivist may object to reclassification. NARA has added to the end of § 1260.70 the language ''in accordance with section 1.7(c) of the Order and § 2001.13(a) of the Implementing Directive (32 CFR 2001.13(a))''.

One commenter suggested adding a sentence to the definition of declassification in § 1260.2 stating that if an agency does not review records before automatic declassification occurs, that process will supersede the agency's review. This suggested change is not necessary because section 3.3 of the EO covers this. The same commenter asked if an agency can delegate to NARA authority in the form of declassification guidance to declassify foreign government information. According to 32 CFR 2001.30(h), NARA must consult with the original classifying agency. This commenter also suggested that the statement in § 1260.42(a)(2) that NARA will ''provide space for agency reviewers in the facility in which the records are located as space is available'' is contradictory and suggested that NARA clarify the wording. NARA has revised the section to indicate that NARA will provide space to the extent that space is available.

This commenter asked why in § 1260.44 NARA stated that it will consider loaning records back to an originating agency for declassification review only in the Washington, DC, metropolitan area. NARA has limited the loan of accessioned records to the Washington, DC, metropolitan area so that NARA staff can inspect an agency facility to insure that the facility has proper environmental and security conditions for accessioned archival records. NARA staff must also be able to monitor the handling and storage of archival records while in agency custody.

One commenter objected to the provisions of § 1260.46 allowing a delay in automatic declassification of five years for classified information in microforms, motion pictures, audiotapes, videotapes, or comparable media that make declassification review more difficult. He stated that ''While the term 'Special media records' has long been used by NARA to designate government records existing on microform, film audiotapes, videotapes and the like, it is time to not separate out government records based upon the media they reside on. Records are records.'' In the 2003 amendment to the EO, ISOO recognized that classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media might make a review for possible declassification exemptions more difficult or costly and implemented this provision. This rule brings NARA's procedures into conformity with the EO.

One commenter suggested that the time for an agency to follow up on a preliminary telephone request for an urgent reclassification action be shortened from 5 days to 3 for fear that the longer time will lead to the formal documentation not being provided. NARA does not accept this recommendation. Initial requests for reclassification usually come from agency declassification reviewers. NARA wants to allow time for appropriate staffing of the request within the agency.

One agency commenter requested revision of § 1260.28 to make it clear that the Department of Defense, in conjunction with the Department of Energy, is responsible for classification and declassification guidance for Formerly Restricted Data. We have revised § 1260.28 to read, ''Only designated officials within the Department of Energy may declassify records containing Restricted Data. Any record determined to contain Restricted Data (RD) may not be reviewed for declassification of national security information until the Secretary of Energy has determined that the RD marking may be removed. Declassification review of national security information in records containing Formerly Restricted Data (FRD) may only be performed after the Secretary of Energy, in conjunction with the Secretary of Defense, has determined that the FRD marking may be removed.''

As part of NARA's analysis of comments received on the proposed rule, ISOO recommended that we add language to paragraphs (a) and (b) of § 1260.20 to make it clear that while there is no requirement for an agency to review its records for its own equities, there is a requirement to review for those of other agencies. We have made the suggested changes.

In § 1260.26 we have changed Director of Central Intelligence to Director of National Intelligence to conform with the change in the law. We have deleted ''The Executive Secretary'' and corrected the room number for the address of the ISCAP cited in §§ 1260.54(e), 1260.55(d), and 1260.62(c). We have made minor clarifications in language in §§ 1260.40, 1260.54(b)(2), 1260.54(f), 1260.74(d), and 1260.74(e).

This rule is a significant regulatory action for the purposes of EO 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects Federal agencies and individual researchers. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1260

Archives and records, Classified information.

■ For the reasons set forth in the preamble, NARA amends chapter XII of title 36, Code of Federal Regulations, by revising part 1260 to read as follows:

PART 1260—DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

Subpart A—General Information

Sec.
1260.1 What is the purpose of this part?
1260.2 Definitions.
1260.4 What NARA holdings are covered by this part?
1260.6 What is the authority for this part?

Subpart B—Responsibilities

1260.20 Who is responsible for the declassification of classified national

security Executive Branch information that has been accessioned by NARA?
1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?
1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?
1260.26 Who is responsible for issuing special procedures for declassification of information pertaining to intelligence activities, sources and methods, or of classified cryptologic information in NARA's holdings?
1260.28 Who is responsible for declassifying records that contain information classified under the Atomic Energy Act of 1954, as amended, commonly referred to as Restricted Data and Formerly Restricted Data?

Subpart C—Systematic Review

1260.40 How are records at NARA reviewed for declassification?
1260.42 What are the procedures for agency personnel to review records at a NARA facility?
1260.44 Will NARA loan accessioned records back to the agencies to conduct declassification review?
1260.46 How will NARA implement automatic declassification?

Subpart D—Mandatory Review

Executive Branch Records

1260.50 What procedures does NARA follow when it receives a request for Executive Branch records under mandatory review?
1260.52 What are agency responsibilities after receiving a mandatory review request forwarded by NARA?
1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?
1260.55 What is the appeal process when an agency denies a mandatory review request for Executive Branch information within Nixon Presidential Historical materials or Presidential records?

White House Originated Information

1260.56 Is White House originated information subject to mandatory review?
1260.58 What are the procedures for requesting a mandatory review of White House originated information?
1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?
1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

Subpart E—Reclassification

1260.70 Can previously released Executive Branch information be reclassified or have its classification restored?
1260.72 Can previously released White House originated information be reclassified or have its classification restored?
1260.74 What if NARA does not concur with an agency decision to reclassify or restore the classification of information that has been previously released?

Authority: 44 U.S.C. 2101 to 2118; 5 U.S.C. 552; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13142, 64 FR 66089, 3 CFR, 1999 Comp., p. 236; E.O. 13292, 68 FR 15315; 32 CFR part 2001.

Subpart A—General Information

§ 1260.1 What is the purpose of this part?

(a) This part defines the responsibilities of NARA and other Federal agencies for declassification of classified national security information in the holdings of NARA.

This part also describes NARA's procedures for:

(1) Conducting systematic reviews of NARA holdings, and

(2) Processing mandatory review requests for NARA holdings.

(b) Regulations for researchers who wish to request access to materials containing classified national security information are found in 36 CFR part 1256.

§ 1260.2 Definitions.

(a) *Classified national security information* or *classified information* means information that has been determined under EO 12958, as amended, or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(b) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(c) *Systematic declassification review* means the review for declassification of classified information contained in records that have been determined by the Archivist of the United States to have permanent historical value in accordance with 44 U.S.C. 2107.

(d) *Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of EO 12958, as amended.

(e) *Integral file block* means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(f) *File series* means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

§ 1260.4 What NARA holdings are covered by this part?

The NARA holdings covered by this part are records legally transferred to the National Archives and Records Administration (NARA), including Federal records accessioned into the National Archives of the United States, 44 U.S.C. 2107; Presidential records, 44 U.S.C. 2201–2207; Nixon Presidential materials, 44 U.S.C. 2111 note; and donated historical materials in Presidential Libraries and in the National Archives of the United States, 44 U.S.C. 2111.

§ 1260.6 What is the authority for this part?

Declassification of and public access to classified national security information is governed by EO 12958 of April 17, 1995 (3 CFR part 1995 Comp., p. 333), EO 13142 of November 19, 1999 (3 CFR part 1999 Comp., p. 236), EO 13292 of March 28, 2003 (68 FR 15315), collectively referred to as EO 12958, as amended, and by the Information Security Oversight Office (ISOO) Implementing Directive for EO 12958, as amended (32 CFR part 2001).

Subpart B—Responsibilities

§ 1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?

(a) Consistent with the requirements on automatic declassification in section 3.3 of EO 12958, as amended, the originating agency is responsible for declassification of its information, but may delegate declassification authority to NARA in the form of declassification guidance. Even though the agency delegates declassification authority to NARA in the form of declassification guidance, the agency remains responsible for reviewing the records to identify other agencies having primary subject matter interest (''equities'') before the date that the records become eligible for automatic declassification.

(b) If an agency does not delegate declassification authority to NARA, the agency is responsible for both declassification of its own information and reviewing the records to identify the equities of other agencies before the date that the records become eligible for automatic declassification.

(c) NARA is responsible for the declassification of records of a defunct

agency that has no successor in function. NARA will consult with agencies having equities in the records before making declassification determinations.

§ 1260. 22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?

(a) NARA is responsible for declassification of information from a previous administration that was originated by:

(1) The President;

(2) The White House staff;

(3) Committees, commissions, or boards appointed by the President; or

(4) Others specifically providing advice and counsel to the President or acting on behalf of the President.

(b) NARA will consult with agencies having primary subject matter interest before making declassification determinations.

§ 1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?

(a) The agency that received or classified the information is responsible for its declassification.

(b) In the case of a defunct agency, NARA is responsible for declassification of foreign government information in its holdings and will consult with the agencies having primary subject matter interest before making declassification determinations.

§ 1260.26 Who is responsible for issuing special procedures for declassification of information pertaining to intelligence activities, sources and methods, or of classified cryptologic information in NARA's holdings?

(a) The Director of National Intelligence is responsible for issuing special procedures for declassification of classified information pertaining to intelligence activities and intelligence sources and methods.

(b) The Secretary of Defense is responsible for issuing special procedures for declassification of classified cryptologic information.

§ 1260.28 Who is responsible for declassifying records that contain information classified under the Atomic Energy Act of 1954, as amended, commonly referred to as Restricted Data and Formerly Restricted Data?

Only designated officials within the Department of Energy may declassify records containing Restricted Data. Any record determined to contain Restricted Data (RD) may not be reviewed for declassification of national security information until the Secretary of Energy has determined that the RD marking may be removed. Declassification review of national security information in records containing Formerly Restricted Data (FRD) may only be performed after the Secretary of Energy, in conjunction with the Secretary of Defense, has determined that the FRD marking may be removed.

Subpart C—Systematic Review

§ 1260.40 How are records at NARA reviewed for declassification?

(a) Consistent with the requirements on automatic declassification in section 3.3 of EO 12958, as amended, NARA staff may conduct systematic reviews for declassification of records for which the originating agencies have provided declassification guidance. The originating agency must review records for which it has not provided declassification guidance.

(b) Agencies may choose to review their own records that have been transferred to NARA's legal custody, by sending personnel to the NARA facility where the records are located to conduct the declassification review.

(c) Classified materials in the Presidential Library system may be referred to agencies holding equity in the documents via the Remote Archives Capture (RAC)Project. The RAC Project is a collaborative program to implement the declassification provisions of E.O. 12958, as amended, with respect to twenty-five year old or older classified holdings in the Presidential Libraries. Classified Presidential materials at the libraries are scanned and brought to the Washington, DC, metropolitan area in electronic form for review by equity-holding agencies in the metropolitan area.

§ 1260.42 What are the procedures for agency personnel to review records at a NARA facility?

(a) NARA will:

(1) Make the records available to properly cleared agency reviewers;

(2) Provide space for agency reviewers in the facility in which the records are located to the extent that space is available; and

(3) Provide training and guidance for agency reviewers on the proper handling of archival materials.

(b) Agency reviewers must:

(1) Follow NARA security regulations and abide by NARA procedures for handling archival materials;

(2) Follow NARA procedures for identifying and marking documents that cannot be declassified; and

(3) Obtain permission from NARA before bringing into a NARA facility computers, scanners, tape recorders, microfilm readers and other equipment necessary to view or copy records. NARA will not allow the use of any equipment that poses an unacceptable risk of damage to archival materials. See 36 CFR part 1254 for more information on acceptable equipment.

§ 1260.44 Will NARA loan accessioned records back to the agencies to conduct declassification review?

In rare cases, when agency reviewers cannot be accommodated at a NARA facility, NARA will consider a request to loan records back to an originating agency in the Washington, DC, metropolitan area for declassification review. Each request will be judged on a case-by-case basis. The requesting agency must:

(a) Ensure that the facility in which the documents will be stored and reviewed passes a NARA inspection to ensure that the facility maintains:

(1) The correct archival environment for the storage of permanent records; and

(2) The correct security conditions for the storage and handling of classified national security materials.

(b) Meet NARA requirements for ensuring the safety of the records;

(c) Abide by NARA procedures for handling of archival materials;

(d) Identify and mark documents that cannot be declassified in accordance with NARA procedures; and

(e) Obtain NARA approval for the use of any equipment as described in § 1260.42 (b)(3), such as scanners, copiers, or cameras, to ensure that they do not pose an unacceptable risk of damage to archival materials.

§ 1260.46 How will NARA implement automatic declassification?

(a) *Textual records and collections.* Classified records within an integral file block will be automatically declassified on December 31 of the year that is 25 years from the date of the most recent record within the file block, except as specified in paragraphs (b), (c), (d), and (e) of this section.

(b) *Special media records.* (1) *Federal records.* Upon proper notification from the originating agency, NARA will delay automatic declassification for 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly. Information contained in special media records that has been referred to an equity holder will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the

special media, whichever is longer, unless otherwise properly exempted.

(2) *Presidential collections.* NARA will delay automatic declassification for 5 additional years for classified information contained in Presidential records and donated historical materials in the form of microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly. Information contained in special media records that has been referred will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

(c) *Delayed referrals.* NARA will delay automatic declassification for up to 3 years for classified records that have been identified by the originating agency, or by NARA, and referred to an additional agency or agencies less than 3 years before automatic declassification would otherwise be required.

(d) *Other exceptions.* NARA will apply automatic declassification only to information that has been properly referred to the agency that created the records, or to another agency, but not acted upon by those agencies within 3 years from the date of notification, or 28 years from the date of the record or integral file block, whichever is later.

(1) Information that has not been properly identified and referred to an agency other than the agency that created the records is not subject to automatic declassification. When NARA identifies information of interest to another agency, that agency will have 3 years from the date of notification to exempt or declassify its equity, and to further refer the record if appropriate. If no action is taken, the information from the agency that received the referral will be automatically declassified 3 years from the date of notification.

(2) Information contained in special media records that has been referred to equity holders will be automatically declassified 5 years from the date of notification, or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

(e) *Discovery of information inadvertently not reviewed.* When NARA identifies a file series or collection in our physical and legal custody that contains classified information over 25 years old and that was inadvertently not reviewed before the effective date of automatic declassification, NARA must report the discovery to ISOO within 90 days of discovery. Within 180 days NARA will refer the records to the originating agency or systematically review the records.

(1) The referral agency will have 3 years from the date of notification to exempt, declassify, or further refer the record. If no action is taken, the information from the agency that received the referral will be automatically declassified 3 years from the date of notification.

(2) Information contained in special media records that has been referred will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

Subpart D—Mandatory Review

Executive Branch Records

§ 1260.50 What procedures does NARA follow when it receives a request for Executive Branch records under mandatory review?

(a) If the requested records are less than 25 years old, NARA refers copies of the records to the originating agency and to agencies that have equities in the information for declassification review. Agencies may also send personnel to a NARA facility where the records are located to conduct a declassification review, or may delegate declassification authority to NARA in the form of declassification guidance.

(b) If the requested records are more than 25 years old, NARA will review the records using systematic declassification guidance provided by the originating agency and agencies having equities in the information. If the originating agency, or agencies having equities in the information have not provided systematic declassification guidance, or if there is a question regarding the guidance, NARA will refer any requested documents it is unable to declassify to the appropriate agency or agencies for declassification determinations.

(c) When the records were originated by a defunct agency that has no successor agency, NARA is responsible for making the declassification determinations, but will consult with agencies having primary subject matter interest.

(d) Requests for mandatory review must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort.

(e) If the document or information has been properly reviewed for declassification within the past 2 years, or if the specific information is the subject of pending litigation, NARA will inform the requester of this fact and of the requester's appeal rights.

(f) If NARA determines that a requester has submitted a request for the same information or material under both the mandatory review and the Freedom of Information Act (FOIA), as amended, the request will be treated as a request under the FOIA, unless the requested information or materials are subject only to mandatory review.

(g) In every case, NARA will acknowledge receipt of the request and inform the requester of the action taken. If additional time is necessary to make a declassification determination on material for which NARA has delegated authority, NARA will tell the requester how long it will take to process the request. NARA will also tell the requester if part or all of the requested information is referred to other agencies for declassification review, subject to section 3.6 (a) and (b) of EO 12958 as amended.

§ 1260.52 What are agency responsibilities after receiving a mandatory review request forwarded by NARA?

(a) The agency must make a determination within 180 calendar days after receiving the request or inform NARA of the additional time needed to process the request.

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency.

(c) The agency must return to NARA a complete copy of each referred document with the agency determination uniformly and conspicuously identified to leave no doubt about the status of the information and the authority for its continued classification or its declassification. If a document cannot be declassified in its entirety, the agency must return to NARA a copy of the document with those portions that require continued classification clearly marked. If a document requires continued classification in its entirety, the agency must return to NARA a copy of the document clearly marked.

(d) The agency must also furnish, for transmission to the requester, a brief statement of the reasons the requested information cannot be declassified and a statement of the requester's right to appeal the decision, along with the procedures for filing an appeal. The agency must also supply for transmission to the requester a contact name and title and the address where the appeal must be sent. Additional information on appeals for requesters is

located in 36 CFR part 1256 and in Appendix A to 32 CFR part 2001 (Article VIII).

(e) If the agency fails to make a decision on the mandatory review request within one year of the original date of the request, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

§ 1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?

(a) If an agency denies a declassification request under mandatory review, the requester may appeal directly to the appeal authority at that agency. If a final decision on the appeal is not made within 180 days of the date of the appeal, the appellant may appeal to the ISCAP.

(b) If requested by the agency, NARA will supply the agency with:

(1) Copies of NARA's letter to the requester transmitting the agency denial; and

(2) Copies of any documents denied in part that were furnished in sanitized form to the requester.

(c) The agency appeal authority must notify NARA in writing of the final determination and of the reasons for any denial.

(d) The agency must furnish to NARA a complete copy of any document they released to the requester only in part, clearly marked to indicate the portions that remain classified. NARA will give the requester a copy of any notifications from the agencies that describe what information has been denied and what the requester's appeal rights are.

(e) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

(f) The pertinent NARA office or Presidential Library will coordinate the potential release of information declassified by the ISCAP when the materials are subject to the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and the Presidential Records Act, 44 U.S.C. 2203.

(g) In the case of an appeal for information originated by a defunct agency, NARA will notify the requester of the results and furnish copies of documents declassified in full and in part. If the requested information cannot be declassified in its entirety, NARA will send the requester a brief statement of why the requested information cannot be declassified and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

§ 1260.55 What is the appeal process when an agency denies a mandatory review request for Executive Branch information within Nixon Presidential Historical materials or Presidential records?

(a) If an agency denies a declassification request under mandatory review for Nixon Presidential materials or a Presidential record as defined by 44 U.S.C. 2201, the requester may appeal the determination within 60 calendar days to the Deputy Archivist of the United States, through the appropriate Presidential library. If a final decision on the appeal is not made within 180 days of the date of the appeal, the appellant may appeal to the ISCAP.

(b) When the Deputy Archivist of the United States receives an appeal, he or she will review the decision to deny the information and consult with the appellate authorities in the agencies having primary subject matter interest in the information.

(c) NARA will notify the requester in writing of the determination and make available any additional information that has been declassified as a result of the requester's appeal, according to the notification procedures of EO 13233 for Presidential records or 36 CFR part 1275.

(d) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

(e) The pertinent NARA office or Presidential Library will coordinate the potential release of information declassified by the ISCAP when the materials are subject to the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and the Presidential Records Act, 44 U.S.C. 2203.

White House Originated Information

§ 1260.56 Is White House originated information subject to mandatory review?

White House originated information of former Presidents is subject to mandatory review consistent with the Presidential Records Act, 44 U.S.C. 2203, the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and any deeds of gift that pertain to the materials or the respective Presidential administrations pursuant to 44 U.S.C. 2107 and 2111. Unless precluded by such laws or agreements, White House originated information is subject to mandatory or an equivalent agency review for current classification when NARA has archivally processed the materials or can identify the materials with specificity. However, records covered by the Presidential Records Act are closed for 5 years after the end of the Presidential administration, or until NARA has archivally processed an integral file segment, whichever occurs first, pursuant to 44 U.S.C. 2204.

§ 1260.58 What are the procedures for requesting a mandatory review of White House originated information?

(a) Requests for mandatory review must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort.

(b) If the document or information has been properly reviewed for declassification within the past 2 years, or if the specific information is the subject of pending litigation, NARA will inform the requester of this fact and of the requester's appeal rights.

(c) If NARA determines that a requester has submitted a request for the same information or material under both the mandatory review and the Freedom of Information Act (FOIA), as amended, the request will be treated as a request under the FOIA, unless the requested information or materials are subject only to mandatory review.

(d) NARA will promptly acknowledge to the requester the receipt of a request for White House originated information.

(e) If the requested information is less than 25 years old, NARA will consult with agencies having primary subject matter interest. NARA will forward copies of the requested materials to the agencies and request their recommendations regarding declassification.

(f) If the requested records are more than 25 years old, NARA will review the records using systematic declassification guidance provided by the originating agency and agencies having equities in the information. If the originating agency, or agencies having equities in the information have not provided systematic declassification guidance, or if there is a question regarding the guidance, NARA will refer any requested documents it is unable to

declassify to the appropriate agency or agencies for their recommendations regarding declassification.

(g) NARA will notify the requester of the results and furnish copies of the documents declassified in full and in part. If the requested records are not declassified in their entirety, NARA will send the requester a brief statement of the reasons the information cannot be declassified and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

§ 1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?

When an agency receives a mandatory review request from NARA for consultation on declassification of White House originated material, whether it is an initial request or an appeal, the agency must:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should remain classified;

(b) Provide NARA a brief statement providing the authority for the continued classification of any information not declassified; and

(c) Return all reproductions referred for consultation, including a complete copy of each document that should be declassified only in part, uniformly and conspicuously marked to leave no doubt about the status of the information and the authority for its continued classification or its declassification.

§ 1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

(a) When the Deputy Archivist of the United States receives an appeal, he or she will review the decision to deny the information and consult with the appellate authorities in the agencies having primary subject matter interest in the information.

(b) NARA will notify the requester in writing of the determination and make available any additional information that has been declassified as a result of the requester's appeal.

(c) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

Subpart E—Reclassification

§ 1260.70 Can previously released Executive Branch information be reclassified or have its classification restored?

(a) Records that were properly declassified in accordance with EO 12958, as amended, (or predecessor orders) and that have been released may be temporarily closed and considered for reclassification at the request of an agency. Final action must be taken under the personal authority of the agency head or deputy agency head, who determines in writing within 20 workdays that the reclassification of the information is necessary in the interest of the national security. In addition, the information must be reasonably recoverable in accordance with section 1.7(c) of the Order and section 2001.13(a) of the Implementing Directive (32 CFR 2001.13(a)).

(b) Records that were not properly declassified in accordance with EO 12958, as amended, (or predecessor orders) remain classified. Upon notification, NARA will take administrative action to restore markings and controls, as appropriate. In the event that records have been released, they may be temporarily closed and their classification reviewed at the request of an agency. The agency must notify NARA of the results of the review within 30 days.

(c) Agencies must submit all requests in writing. If the urgency of the request precludes a written request, an authorized agency official may make a preliminary request by telephone and follow up with a written request within 5 working days. Requests concerning Executive Branch records must be addressed to the Assistant Archivist for Records Services—Washington, DC, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requests concerning information in Presidential libraries must be addressed to the Assistant Archivist for Presidential Libraries, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(d) Any such written request must include all of the following:

(1) A description of the records or donated materials involved, identified with sufficient specificity to enable NARA to locate it with a reasonable amount of effort;

(2) An explanation as to why the records should be closed and reviewed;

(3) A statement as to the authority for any classification or reclassification, to include a reference to the specific category in section 1.4 or 3.3(b) of E.O. 12958, as appropriate; and

(4) Any information the agency may have concerning any previous public disclosure of the information. NARA will assist by providing information.

§ 1260.72 Can previously released White House originated information be reclassified or have its classification restored?

An agency or an entity within the Executive Office of the President that solely advises and assists the President, may ask NARA to temporarily close, review, and possibly reclassify or restore the classification of White House originated information that has been declassified and previously released. The agency or other entity must follow the same procedures as a request for reclassification of Executive branch originated information in 36 CFR 1260.70.

§ 1260.74 What if NARA does not concur with an agency decision to reclassify or restore the classification of information that has been previously released?

(a) If NARA is concerned that relevant procedures and policies under EO 12958, as amended, or its Implementing Directives are not being properly implemented, the Archivist will promptly report such situations to the Director of ISOO.

(b) If, in the opinion of the Archivist, an agency's determination with respect to the classification status of records that have been previously released is improper, the Archivist, as an authorized holder, may challenge the classification status of the pertinent records in accordance with section 1.8 of EO 12958, as amended.

(c) NARA will direct any such challenge in writing to the agency with classification authority and jurisdiction over the information.

(d) If no response is provided by the agency within 120 days, NARA may forward the challenge directly to the ISCAP. NARA must forward the challenge within 60 days of the agency's failure to provide a response within the 120 day response period.

(e) If an agency appellate authority fails to provide NARA with a response to an appeal within 90 days of its receipt, NARA may forward the appeal directly to the ISCAP. NARA must forward the challenge within 60 days of the agency's failure to provide a response to an appeal within the 90 day response period.

(f) All records subject to classification challenges will remain classified pending final resolution of the challenge and, if necessary, any such appeals.

Dated: February 16, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 06–2866 Filed 3–23–06; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2005–ME–0006; A–1–FRL–8048–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; 15% and 5% Emission Reduction Plans, Inventories, and Transportation Conformity Budgets for the Portland One and Eight Hour Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions establish a 15% VOC emission reduction plan, and revised 1990 base year emissions inventory, for the Portland Maine one-hour ozone nonattainment area. Additionally, these revisions establish a 5% increment of progress emission reduction plan, 2002 base year inventory, and transportation conformity budget for the Portland Maine eight-hour ozone nonattainment area. The intended effect of this action is to approve these plans as revisions to the Maine SIP. This action is being taken under the Clean Air Act.

EFFECTIVE DATE: This rule is effective on April 24, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2005–ME–0006. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. EPA Region 1, One Congress Street, Suite 1100–CAQ, Boston, MA 02114–2023, telephone number 617–918–1046, fax number 617–918–0046, e-mail *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 5, 2006 (71 FR 569), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of a 15% rate-of-progress (ROP) plan for the Portland one-hour ozone nonattainment area, a 5% increment of progress emission reduction plan for the Portland 8-hour ozone nonattainment area, the associated base year emission inventories developed in support of these plans, and transportation conformity budgets for 2007 established by the 5% increment of progress plan. The formal SIP revisions were submitted by Maine on June 9, 13, and 14, 2005.

The 15% plan demonstrates that between 1990 and 2005, VOC emissions declined by 56 tons per summer day (tpsd) in the three southern Maine counties that comprise the Portland one-hour nonattainment area. EPA approved Maine's 1990 base year inventory for the Portland one-hour area on February 28, 1997 (62 FR 9081). With this final rule we are approving revisions to Maine's 1990 emissions inventory, as shown in Table 1 below.

TABLE 1.—COMPARISON OF 1990 VOC EMISSION ESTIMATES

[tpsd]

Source category	Originally approved 1990 VOC emissions	Revised 1990 VOC emissions being approved today
Point Source	9.65	9.65
Area Source	31.8	33.43
Non-road Mobile	7.4	18.08
On-Road Mobile	49.87	63.31
Biogenic	197.6	197.6
Total	296.32	322.07

Additionally, the 5% increment of progress plan shows that between 2002 and 2007, VOC emissions will decline by 14.6 tpsd in the Portland eight-hour ozone nonattainment area. We are approving the 2002 base year emission inventory that the state of Maine submitted to EPA for the Portland Maine 8-hour ozone nonattainment, as shown in Table 2 below.

TABLE 2.—2002 EMISSION INVENTORY FOR THE PORTLAND, MAINE 8-HOUR AREA

[tpsd]

Source category	2002 VOC emissions	2002 NO_X emissions
Point Source	3.29	13.08
Area Source	23.65	1.89
On-road Mobile	30.94	61.20
Off-Road Mobile	16.59	13.23
Com. marine, rail, and aircraft	0.45	2.33
Total	74.90	91.70

The 5% plan's estimate of 2007 on-road motor vehicle emissions will establish VOC and NO_X transportation conformity budgets for the 55 towns within the Portland 8-hour nonattainment area. These budgets are 20.115 tons per summer day for VOC, and 39.893 tons per summer day for NO_X.

Other specific requirements of these SIP revisions and the rationale for EPA's approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action: EPA is approving the 15% plan and revisions to the 1990 base year emissions inventory submitted by the State of Maine for the Portland one-hour ozone nonattainment area as revisions to the Maine SIP. Additionally, EPA is approving the 5% increment of progress plan, 2002 base year inventory, and VOC and NO_X transportation conformity budgets for the Portland eight-hour ozone nonattainment area as revisions to the state's SIP.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal

requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 15, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Section 52.1023 is amended by adding paragraphs (e) and (f) to read as follows:

§ 52.1023 Control Strategy: Ozone.

* * * * *

(e) *Approval.* EPA is approving a revision to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 9 and 13, 2005. The revision is for purposes of satisfying the rate of progress requirements of section 182(b)(1) of the Clean Air Act for the Portland Maine one-hour ozone nonattainment area.

(f) *Approval.* EPA is approving a revision to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 9, 13, and 14, 2005. The revision is for purposes of satisfying the 5 percent increment of progress requirement of 40 CFR 51.905(a)(1)(ii)(B) for the Portland Maine eight-hour ozone nonattainment area. The revision establishes motor vehicle emissions budgets for 2007 of 20.115 tons per summer day (tpsd) of volatile organic compound (VOC) and 39.893 tpsd of nitrogen oxide (NO_X) to be used in transportation conformity in the Portland Maine 8-hour ozone nonattainment area.

■ 3. Section 52.1036 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 52.1036 Emission Inventories.

(a) The Governor's designee for the State of Maine submitted 1990 base year emission inventories for the Knox and Lincoln Counties area, the Lewiston and Auburn area, the Portland area, and the Hancock and Waldo Counties area on July 25, 1995 as a revision to the State Implementation Plan (SIP). An amendment to the 1990 base year emission inventory for the Portland area was submitted on June 9, 2005. The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas.

* * * * *

(f) The Governor's designee for the State of Maine submitted a 2002 base year emission inventory for Cumberland, Sagadahoc, and York counties, to represent emissions for the Portland 8-hour ozone nonattainment area on June 9, 2005, as a revision to the State Implementation Plan (SIP). The 2002 base year emission inventory requirement of 40 CFR 51.915 has been satisfied for this area.

[FR Doc. 06–2815 Filed 3–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–RO4–OAR–2005–NC–0002–200538(a); FRL–8049–2]

Approval and Promulgation of Implementation Plans; North Carolina: Charlotte, Raleigh-Durham, and Winston-Salem Areas Second 10-Year Maintenance Plan for the Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the North Carolina State Implementation Plan (SIP) submitted in final form on March 23, 2005. The SIP revision provides the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Carbon Monoxide Maintenance Areas, which are composed of the following four counties: Mecklenburg (Charlotte Area); Durham and Wake (Raleigh-Durham Area); and Forsyth (Winston-Salem Area). The second 10-year maintenance plan includes new motor vehicle emission budgets (MVEBs) for carbon monoxide for the year 2015. EPA is approving this SIP revision, including the new 2015 MVEBs for carbon monoxide, because it satisfies the requirement of the Clean Air Act (CAA) for the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas.

In addition, in this rulemaking, EPA is providing information on its transportation conformity adequacy determination for new MVEBs for the year 2015 that are contained in the second 10-year carbon monoxide maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas. EPA determined that the 2015 MVEBs are adequate through a previous action.

DATES: This direct final rule is effective May 23, 2006 without further notice, unless EPA receives adverse comment by April 24, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–0AR–2005–NC–0002, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. E-mail: *wood.amanetta@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: ''EPA–R04–0AR–2005–NC–0002'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Amanetta Wood of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. : ''EPA–R04–0AR–2005–NC–0002''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Amanetta Wood of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9025. Ms. Amanetta Wood can also be reached via electronic mail at *wood.amanetta@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is the Background for This Action?
II. What Is EPA's Analysis of the Charlotte, Raleigh-Durham, and Winston-Salem Areas' Second 10-Year Maintenance Plan?
III. What Is EPA's Action on the Charlotte, Raleigh-Durham, and Winston-Salem Areas' Second 10-Year Maintenance Plan?
IV. What Is an Adequacy Determination and What Is EPA's Adequacy Determination for the Charlotte, Raleigh-Durham, and Winston-Salem Areas' New MVEBs for the Year 2015?
V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

In 1994, based on measured air quality data, the Charlotte, Raleigh-Durham, and Winston-Salem Areas were able to demonstrate attainment with the carbon monoxide National Ambient Air Quality Standard (NAAQS) due to numerous control measures implemented in each of the respective Areas. As a result of the measured air quality data, North Carolina petitioned

EPA for redesignation of these three Areas to attainment for carbon monoxide. In 1994, EPA redesignated the Winston-Salem Area to attainment based on the measured air quality data and a 10-year maintenance plan submitted for the Winston-Salem Area (59 FR 48399). In 1995, EPA redesignated both the Charlotte Area and the Raleigh-Durham Area to attainment based on the measured air quality data and the 10-year maintenance plan submitted for these areas (60 FR 39258).

The air quality maintenance plan is a requirement of the 1990 CAA amendments for nonattainment areas that come into compliance with the NAAQS to assure their continued maintenance of that standard. Eight years after redesignation to attainment, section 175A(b) of the CAA requires the state to submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period (this is known as the second 10-year maintenance plan). The second 10-year maintenance plan updates the original 10-year carbon monoxide maintenance plan for the next 10-year period. Thus, pursuant to the CAA section 175A(b), North Carolina was required to submit the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas demonstrating that it would continue to attain the carbon monoxide NAAQS in those Areas through 2015.

II. What Is EPA's Analysis of the Charlotte, Raleigh-Durham, and Winston-Salem Areas' Second 10-Year Maintenance Plan?

On March 23, 2005, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), submitted a SIP revision to EPA that provided for the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas as required by section 175A(b) of the CAA. This second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas includes a new carbon monoxide emission inventory for 2000 which reflects emission controls applicable for the Charlotte, Raleigh-Durham, and Winston-Salem Areas, and actual and projected emissions for 2000, 2005, 2010, and 2015. The SIP revision also establishes new MVEBs for carbon monoxide for 2015 for the Charlotte, Raleigh-Durham, and Winston-Salem Areas.

The emission reduction measures for carbon monoxide emissions implemented in the Charlotte, Raleigh-Durham, and Winston-Salem Areas from 1995 to 2005, and control measures that are projected to occur between 2005 and 2015, are accounted for in the 2000 emission inventory and projected emissions estimates. The following three tables provide emissions data and projections for carbon monoxide. The on-road mobile portion of the data was calculated with Mobile 6.2.

TABLE 1.—CHARLOTTE CARBON MONOXIDE AREA—MECKLENBURG COUNTY EMISSION INVENTORY AND PROJECTED CO EMISSIONS (2000–2015)

[Calculated in tons per day]

	Area	Non-road mobile	On-road mobile	Point	Total
2000	24.97	142.23	522.39	5.58	695.17
2005	29.42	160.64	431.03	6.43	627.52
2010	32.42	171.27	357.99	7.45	569.13
2015	34.96	181.77	328.79	8.27	553.79

TABLE 2.—RALEIGH-DURHAM CARBON MONOXIDE AREA—DURHAM AND WAKE COUNTY EMISSION INVENTORY AND PROJECTED CO EMISSIONS (2000–2015)

[Calculated in tons per day]

	Area	Non-road mobile	On-road mobile	Point	Total
Durham County:					
2000	13.45	31.98	178.79	0.86	225.08
2005	15.44	34.12	152.32	0.91	202.79
2010	16.73	31.52	118.71	0.98	167.94
2015	17.99	28.82	105.30	1.05	153.16
Wake County:					
2000	35.21	87.26	419.46	1.36	543.29
2005	41.45	97.02	362.51	1.44	502.42
2010	45.36	102.61	300.12	1.57	449.66
2015	49.21	108.12	282.39	1.69	441.41

TABLE 3.—WINSTON-SALEM CARBON MONOXIDE AREA—FORSYTH COUNTY EMISSION INVENTORY AND PROJECTED CO EMISSIONS (2000–2015)

[Calculated in tons per day]

	Area	Non-road mobile	On-road mobile	Point	Total
2000	25.13	40.35	259.88	2.56	327.92
2005	29.58	44.07	211.02	2.49	287.16
2010	32.10	43.50	168.17	2.61	246.38
2015	34.51	43.00	145.05	2.76	225.32

The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Charlotte, Raleigh-Durham, and Winston-Salem Areas continued to attain the carbon monoxide NAAQS based on air quality data for the year 2000. Therefore, in this SIP revision, the emissions from the year 2000 are used to calculate a new attainment emissions level for the Charlotte, Raleigh-Durham, and Winston-Salem Areas. The emissions from point, area, nonroad, and mobile sources in 2000 equal 695.17 tons per day (tpd) of carbon monoxide for Mecklenburg County, 225.08 tpd for Durham County, 543.29 tpd for Wake County, and 327.92 tpd for Forsyth County. The projected carbon monoxide emissions for the year 2015 equal 553.79 tpd for Mecklenburg County, 153.16 tpd for Durham County, 441.41 tpd for Wake County, and 225.32 tpd for Forsyth County. These emission calculations were made using the MOBILE6.2 model and the most recent version of the nonroad model. The projected emissions are lower than the attainment level of emissions, thus demonstrating continued maintenance of the carbon monoxide NAAQS.

The safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin is for the entire Charlotte, Raleigh-Durham, and Winston-Salem Areas and is sub-allocated by county. The safety margin credit, or a portion thereof, can be allocated to the transportation sector, however, the total emission level must stay below the attainment level. The safety margin for carbon monoxide is the difference between these amounts or, in this case, 141.39 tpd for Mecklenburg County for 2015, 71.92 tpd for Durham County for 2015, 101.88 tpd for Wake County for 2015, and 102.59 tpd for Forsyth County for 2015. The emissions are projected to maintain the Charlotte, Raleigh-Durham, and Winston-Salem Areas' air quality consistent with the carbon monoxide NAAQS.

Maintenance plans and other control strategy SIPs create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system.

The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish and revise MVEBs in a SIP. In this SIP revision, the Charlotte, Raleigh-Durham, and Winston-Salem Areas used MOBILE6.2 to establish MVEBs for carbon monoxide for the year 2015. The State of North Carolina has chosen to allocate the entire safety margin to the transportation section. These MVEBs are listed in Tables 4.1, 4.2, and 4.3.

TABLE 4.1.—MECKLENBURG COUNTY 2015 MVEB WITH SAFETY MARGIN INCLUDED

	2015 projected on-road emissions (tons per day)	Safety margin	2015 MVEB with safety margin
CO	328.79	141.39	470.18

TABLE 4.2.—DURHAM COUNTY 2015 MVEB WITH SAFETY MARGIN INCLUDED

	2015 projected on-road emissions (tons per day)	Safety margin	2015 MVEB with safety margin
CO	105.30	71.92	177.22

TABLE 4.3.—WAKE COUNTY 2015 MVEB WITH SAFETY MARGIN INCLUDED

	2015 projected on-road emissions (tons per day)	Safety margin	2015 MVEB with safety margin
CO	282.39	101.88	384.27

TABLE 4.4.—FORSYTH COUNTY 2015 MVEB WITH SAFETY MARGIN INCLUDED

	2015 on-road emissions (tons per day)	Safety margin	MVEB with safety margin
CO	145.05	102.59	247.64

The MVEBs presented in Table 4.5 are directly reflective of the combined onroad (or ''highway'') emissions for the Charlotte, Raleigh-Durham, and Winston-Salem Areas for carbon monoxide, plus allocation from the available safety margin. After allocation of the safety margin to the MVEBs there is no available safety margin for future allocation. In summary, the new carbon monoxide MVEBs for the year 2015 are 470.18 tpd for Mecklenburg County; 177.22 tpd for Durham County; 384.27 tpd for Wake County; and 247.64 tpd for Forsyth County. The MVEBs for the Charlotte, Raleigh-Durham, and Winston-Salem Areas that the

transportation partners must use are provided in the table below.

TABLE 4.5.—2015 MVEBS FOR CO

[Tons per day]

Mecklenburg County	470.18
Durham County	177.22
Wake County	384.27
Forsyth County	247.64

III. What Is EPA's Action on the Charlotte, Raleigh-Durham, and Winston-Salem Areas' Second 10-Year Maintenance Plan?

EPA is approving North Carolina's SIP revision pertaining to the Charlotte, Raleigh-Durham, and Winston-Salem Areas' second 10-year maintenance plan, including the new 2015 MVEBs for carbon monoxide.

IV. What Is an Adequacy Determination and What Are EPA's Adequacy Determinations for the Charlotte, Raleigh-Durham, and Winston-Salem Areas' New MVEBs for the Year 2015?

Under Section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.* be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Under the transportation conformity rule, at 40 CFR part 93, projected emissions from transportation plans and programs must be equal to or less than MVEBs for the area. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

Until MVEBs in a SIP submittal are approved by EPA, they cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are ''adequate.'' Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by the State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP even though the approval of the SIP revision containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining ''adequacy'' of MVEBs in submitted SIPs are set out in EPA's Transportation Conformity Rule at 40 CFR 93.118(e)(4).

Through this rulemaking, EPA is providing information on the status of its transportation conformity adequacy determination for new MVEBs for the year 2015 that are contained in the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas. The adequacy comment period for the 2015 MVEBs began on March 29, 2005, with EPA's posting of availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp.htm*). The adequacy comment period for these MVEBs closed on April 28, 2005. No comments on this submittal were received during EPA's adequacy comment period.

In a letter dated April 29, 2005, to B. Keith Overcash, Director of the Division of Air Quality NCDENR, EPA informed the State of its intention to find the new 2015 MVEBs for carbon monoxide adequate for transportation conformity purposes. Subsequently, in a Final **Federal Register** notice dated May 6, 2005, (70 FR 24037) EPA found the Charlotte, Raleigh-Durham, and Winston-Salem Areas' 2015 carbon monoxide MVEBs adequate. These MVEBs meet the adequacy criteria contained in the Transportation Conformity Rule. The 2015 MVEBs for the Charlotte, Raleigh-Durham, and Winston-Salem Areas are currently being used for transportation conformity determinations. For regional emission analysis years that involve the year 2015 or beyond, the applicable budget for the purposes of conducting transportation conformity analysis will be the following 2015 MVEBs for carbon monoxide: 470.18 tpd for Mecklenburg County; 177.22 tpd for Durham County; 384.27 tpd for Wake County; and 247.64 tpd for Forsyth County.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996,

generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements, Intergovernmental relations, Ozone.

Dated: March 14, 2006.

A. Stanley Maiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. Section 52.1770 (e) is amended by adding a new entry at the end of the table for ''Charlotte, Raleigh-Durham, and Winston-Salem Carbon Monoxide Second 10-Year Maintenance Plan'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * * *	*	*	*
Charlotte, Raleigh-Durham, and Winston-Salem Carbon Monoxide Second 10-Year Maintenance Plan.	March 18, 2005	March 24, 2006	[Insert first page of publication]

[FR Doc. 06–2870 Filed 3–23–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–310–1310–PP–241A]

RIN 1004–AD83

Oil and Gas Lease Acreage Limitation Exemptions and Reinstatement of Oil and Gas Leases

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this final rule to amend its regulations to conform to provisions of the Energy Policy Act of 2005 (EPAct) that changed oil and gas lease acreage limitations and oil and gas lease reinstatement provisions. Section 352 of the EPAct expands the types of lease holdings that are exempt from the lease acreage holding limitations. Section 371 of the EPAct extends the time to file a lease reinstatement petition from 15 months to 24 months.

DATES: This final rule is effective March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Jay Douglas in the Fluid Minerals Group at (202) 452–0336. For assistance in reaching Mr. Douglas, 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:

I. Background
II. Discussion of the Final Rule
III. Procedural Matters

I. Background

Section 184(d) of the Mineral Leasing Act of 1920 limited the amount of acreage a Federal oil and gas lessee may hold in any one state to 246,080 acres. That section also provides that certain types of acreage holdings are exempt from those limitations. Section 352 of the EPAct amended the Mineral Leasing Act to expand the types of acreage holdings that are exempt from the limitations imposed by the Act.

Section 188(d) of the Mineral Leasing Act of 1920 provides for reinstatement, under certain circumstances, of Federal oil and gas leases that were terminated for nonpayment of rental. Section 371 of the EPAct amended that section of the Act by extending the maximum time for a lessee to submit a petition for reinstatement to the BLM.

The BLM finds good cause to omit the general notice of proposed rulemaking required by 5 U.S.C. 553(b). The notice and comment are unnecessary because the terms of the EPAct are very clear and provide no room for interpretation. Both changes are required by the EPAct, are not discretionary on the part of the Secretary of the Interior, and would implement clear and mandatory provisions of a recently enacted statute. For all the reasons noted above, the BLM further finds good cause to waive the delay in effectiveness in 5 U.S.C. 553(d). In addition, the provisions of the revised regulations do not require any change in conduct by the public and have been known to the public since the EPAct's enactment in August 2005.

II. Discussion of the Final Rule

This final rule will implement the changes to the 43 CFR Part 3100 regulations that are required because of amendments Sections 352 and 371 of the EPAct made to the Mineral Leasing Act. A section-by-section discussion of the changes follows:

Section 3101.2–3 Excepted Acreage

This section is revised to add the following to the list of acreage that will

not be included in computing accountable acreage:

(A) Communitization agreements; and

(B) Acreage in leases for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year.

This section previously stated that acreage in a communitization agreement should not be exempted and the section did not include leases for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year. The other categories of excepted acreage, such as acreage subject to an operating, drilling, or development contract, are renumbered but not changed.

Section 3108.2–3 Reinstatement at Higher Rental and Royalty Rates: Class II Reinstatements

Paragraph (b)(1) of this section is revised by limiting its application to leases that terminated on or before August 8, 2005, the date of enactment of EPAct. Under this new section, if a lease terminated on or before August 8, 2005, any form of actual notice, including a return of a check, constitutes notice of termination. The provisions of this paragraph are not changed except as to the period to which it applies, i.e. leases that terminated for underpayment of rental, before August 8, 2005.

This section is further revised by adding a new paragraph (b)(2) that addresses the timing of submission of petitions for reinstatement for leases that terminated after August 8, 2005. Under this new section, if a lease terminated after August 8, 2005, the BLM can reinstate the lease if the lessee submitted a petition for reinstatement and the required back rental and royalty at the increased rate accruing from the date of termination by the earlier of:

(A) Sixty days after the last date that any lessee of record received Notice of Termination by certified mail; or

(B) Twenty four months after termination of the lease.

This provision is similar to previous section 3108.2–3(b)(1) except that it increases the maximum amount of time to submit a petition for reinstatement from 15 months to 24 months.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These final regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These final regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

This final rule expands the types of lease holdings that are exempt from the lease acreage holding limitations and extends the time to file a lease reinstatement petition from 15 months to 24 months. These provisions are administrative in nature and have the potential for only minor economic impacts, however, the economic impact is not a result of this rulemaking, as both changes are required by the EPAct and are not discretionary on the part of the Secretary of the Interior.

National Environmental Policy Act

The BLM has determined that this final rule is essentially administrative in nature. This qualifies for a categorical exclusion under 516 Departmental Manual (DM) Chapter 2, Appendix 1.10. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA), pursuant to 516 DM, Chapter 2, Appendix 1. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final regulations will have no effect on any small entities. These provisions are administrative in nature and have the potential for only minor economic impacts, however, the economic impact is not a result of this rulemaking, as both changes are required by the EPAct and are not discretionary on the part of the Secretary of the Interior. Therefore, the BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final regulations are not a ''major rule'' as defined at 5 U.S.C. 804(2). These provisions are administrative in nature and have the potential for only minor economic impacts, however, the economic impact is not a result of this rulemaking, as both changes are required by the EPAct and are not discretionary on the part of the Secretary of the Interior.

Unfunded Mandates Reform Act

These final regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The final rule will not impose any mandate on State, local, or tribal governments or the private sector. The regulations implement clear and mandatory provisions of a recently enacted statute. These provisions are administrative in nature and have the potential for only minor economic impacts, however, the economic impact is not a result of this rulemaking, as both changes are required by the EPAct and are not discretionary on the part of the Secretary of the Interior. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule has no effects that could be considered a taking. The final regulation is essentially administrative in nature, and assists rather than restricts the continued holding of leases by their current private owners, by relaxing acreage holding limitations and

giving a longer period of time to seek reinstatement of lapsed leases. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final rule 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. The final rule will have no 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. The final regulation is essentially administrative in nature, merely expanding the types of lease holdings that are exempt from the lease acreage holding limitations and extending the maximum time to file a lease reinstatement petition from 15 months to 24 months. Therefore, in accordance with Executive Order 13132, the BLM has determined that this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has determined that this rule has no impact on Tribal lands because the BLM's part 3100 regulations do not apply to Tribal lands.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule does not represent the exercise of agency discretion. Congress' mandate to expand the types of holdings that are exempt from the acreage holding limitations and to increase the maximum amount of time to petition for lease reinstatement in certain circumstances may result in an increase in oil and gas production of unknown amounts. It does not impose a regulatory burden on any lessee.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this final rule is administrative in nature, merely expanding the types of lease holdings that are exempt from the lease acreage holding limitations and extending the maximum time to file a lease reinstatement petition from 15 months to 24 months. This rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; has no effect on local participation in the Federal decision-making process; and does not affect programs, projects, and activities having to do with protecting public health and safety.

Paperwork Reduction Act

The BLM has determined that this rulemaking does not contain any new information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has approved the information collection requirements in the regulations under OMB control number 1004–0185 which expires June 30, 2006.

Author

The principal author of this rule is Jay Douglas of BLM's Fluid Minerals Group (WO320) assisted by Ian Senio of BLM's Regulatory Affairs Group and Dennis Daugherty, Office of the Solicitor, Department of the Interior.

List of Subjects in 43 CFR Part 3100

Government contracts; Mineral royalties; Oil and gas exploration; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

Dated: March 10, 2006.

Chad Calvert,

Acting, Assistant Secretary, For Land and Minerals Management.

■ Accordingly, BLM amends 43 CFR part 3100, as set forth below:

PART 3100—OIL AND GAS LEASING

■ 1. Revise the authority citation for part 3100 to read as follows:

Authority: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109–58).

■ 2. Amend § 3101.2–3 by designating the first sentence of the section as paragraph (a) and the second sentence of the section as paragraph (b) and by revising newly designated paragraph (a) to read as follows:

§ 3101.2–3 Excepted acreage.

(a) The following acreage shall not be included in computing accountable acreage:

(1) Acreage under any lease any portion of which is committed to any Federally approved unit or cooperative plan or communitization agreement;

(2) Acreage under any lease for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year; and

(3) Acreage under leases subject to an operating, drilling or development contract approved by the Secretary.

* * * * *

■ 3. Amend § 3108.2–3 by redesignating paragraph (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively, adding a new paragraph (b)(1), and revising newly designated paragraph (b)(2) to read as follows:

§ 3108.2–3 Reinstatement at higher rental and royalty rates: Class II reinstatements.

* * * * *

(b)(1) Leases that terminate on or before August 8, 2005, may be reinstated if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record, whether by return of check or any form of actual notice; or

(ii) Fifteen months after termination of the lease.

(2) Leases that terminate after August 8, 2005 may be reinstated if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the last date that any lessee of record received Notice of Termination by certified mail; or

(ii) Twenty four months after termination of the lease.

* * * * *

[FR Doc. 06–2848 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060317076–6076–01; I.D. 032006E]

RIN 0648–AU41

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the shallow-set pelagic longline fishery north of the equator for all vessels registered under the Hawaii longline limited access program. This action is necessary to comply with regulations that govern the pelagic fisheries of the western Pacific region that establish maximum annual limits on the numbers of interactions that occur between longline fishing gear and sea turtles. The 2006 annual limit on physical interactions between longline fishing and sea turtles has been reached, so the fishery must be closed for the remainder of the calendar year.

DATES: Effective 7:09 a.m. (0709 hrs) Hawaii Standard Time (HST) on March 20, 2006, through 11:59 p.m. (2359 hrs) HST on December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS, 808–944–2271.

SUPPLEMENTARY INFORMATION: NMFS manages the pelagic longline fishery for swordfish, tunas and related species in the western Pacific region, according to the Fishery Management Plan for the Pelagic Species of the Western Pacific Region, prepared by the Western Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 660.

The regulations at § 660.33(b)(1) governing western Pacific pelagic fisheries establish maximum annual limits on the numbers of physical interactions that occur between longline fishing gear and sea turtles. These limits apply to physical interactions experienced by vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing, i.e., fishing that is directed at swordfish. There are two calendar-year annual limits on physical interactions, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

Interactions with turtles are monitored using data from scientific observers placed by NMFS aboard all vessels engaged in shallow-set longline fishing. NMFS is required to maintain 100 percent observer coverage in the Hawaii shallow-set longline fishery.

The regulations at § 660.33(b)(2) prescribe that, as soon as the interaction limit for either of the two turtle species has been determined to have been reached in a given year, the shallow-set component of the Hawaii-based longline fishery must be closed for the remainder of the calendar year, after giving permit holders and operators actual notice of the closure. Upon receiving actual notice from NMFS, fishermen are required to remove all longline fishing gear from the water and immediately terminate their fishing trip. Once the shallow-set component of the fishery is closed, it is prohibited for any vessel registered under a Hawaii longline limited-access permit to engage in shallow-set longline fishing north of the equator.

In accordance with § 660.33(b)(2), the Regional Administrator, Pacific Islands Region, NMFS, has determined that the 2006 interaction limit of 17 loggerhead turtles has been reached. Consequently, NMFS closed the shallow-set component of the Hawaii-based longline fishery at 7:09 a.m. (0709) HST on March 20, 2006. This closure ends at 11:59 pm (2359 hrs) HST on December 31, 2006.

Classification

This action responds to the best available information obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Given the ability of the fishery to suddenly reach and exceed the low limit on turtle takes, it is impracticable for NMFS to delay implementing the closure. There is insufficient time between when the observer data are collected as to the number of turtle interactions in the fishery and the time the fishery closure must be implemented. If not implemented quickly, the number of allowable interactions will likely be exceeded, thereby imposing harm to the public interest in protecting these turtle species. For the same reasons, the AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3).

This action is required by § 660.33(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–2883 Filed 3–21–06; 2:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 032106B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2006 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2006, through 1200 hrs, A.l.t., August 25, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2006 TAC of pollock in Statistical Area 620 of the GOA is 13,394 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock

allowance by 1,818 mt, the remaining amount of the A season allowance for pollock in Statistical Area 620. Therefore, the revised B season allowance of the pollock TAC in Statistical Area 620 is therefore 15,212 mt (13,394 mt plus 1,818 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2006 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 15,200 mt, and is setting aside the remaining 12 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 20, 2006.

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

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

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

Dated: March 21, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–2882 Filed 3–21–06; 2:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 032006A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2006 A season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective March 21, 2006, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 A season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,393 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the adjustment of the Pacific cod TACs in the BSAI on March 14, 2006 (71 FR 13777, March 17, 2006), for the period 1200 hrs, A.l.t., January 1, 2006, through 1200 hrs, A.l.t., April 30, 2006. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,300 mt of the A season apportionment of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A) and § 679.20(a)(7)(iii)(A)(*3*). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*), NMFS apportions 1,300 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) are revised as follows: 93 mt to the A season apportionment for vessels using jig gear and 2,536 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2006.

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

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

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

Dated: March 20, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–2881 Filed 3–21–06; 2:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 57
Friday, March 24, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapters I, IX, X, and XI

[No. AMS–06–01]

Regulatory Flexibility Act: Review of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Schedule for review of agency regulations.

SUMMARY: This document updates the Agricultural Marketing Service's (AMS) schedule for reviewing its regulations under the Regulatory Flexibility Act (RFA). Included in this schedule all regulations that warrant periodic review irrespective of whether specific regulations meet the threshold requirement for mandatory review established by the RFA.

FOR FURTHER INFORMATION CONTACT: Christine M. Sarcone, Director, Legislative and Regulatory Review Staff, AMS, USDA, 14th & Independence Avenue, SW., Room 3510-South, Washington, DC 20250, telephone: (202) 720–3203; fax: (202) 690–3767.

SUPPLEMENTARY INFORMATION:

Background

Sec. 610 of the RFA (5 U.S.C. 610) requires agencies to review all regulations on a periodic basis that have or will have a significant economic impact on a substantial number of small entities. Because many of AMS' regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which although they may not meet the threshold requirement under sec. 610 of the FRA (5 U.S.C. 610) merit review.

The purpose of each review will be to determine whether the rules should be continued without change, or should be amended or rescinded (consistent with the objectives of applicable statutes) to minimize impacts on small businesses. In reviewing its rules the AMS will consider the following factors: (1) The continued need for the rule; (2) The nature of complaints or comments from the public concerning the rule; (3) The complexity of the rule; (4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with the state and local regulations; and (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

This document updates the plan which was published on August 14, 2003 (68 FR 48574). The Agency has modified the plan with respect to Tomatoes Grown in Florida (7 CFR part 966) and Winter Pears grown in Oregon and Washington (7 CFR part 927). With regard to pears, this program has been the subject of substantial regulatory change and we are allowing sufficient time for implementation before asking the public to review the program. With regard to tomatoes, we are continuing our review of that program. We're adding two new programs, Mango Promotion, Research, and Information (7 CFR part 1206) and Mandatory Country of Origin Labeling for Fish and Shellfish (7 CFR part 60) which were implemented in 2004 and will be reviewed in 2014. Results for reviews can be obtained from the person listed in the **FOR FURTHER INFORMATION CONTACT** section in ''Confirmation of regulations'' document which is published at the completion of each review. The list of reviews completed January 2005 to date include: (1) Raisins Produced from grapes Grown in California, part 989, January 30, 2006 (71 FR 4805); (2) Fluid Milk Promotion Program, March 9, 2005 (70 FR 11535); and (3) Dried Prunes Produced in California, February 13, 2006 (71 FR 7395). The Agency expects to publish review summaries for Cranberries Grown in the States of Massachusetts, Rhode Island, etc. (7 CFR part 929); Potato Research and Promotion Program (7 CFR part 1207); Mushroom Promotion, Research and Consumer Information Order (7 CFR part 1209); Soybean Promotion, Research and Consumer Information (7 CFR part 1220); and Egg Research and Promotion (7 CFR part 1250) later this year.

The attached document announces the revised schedule.

Dated: March 20, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

AGRICULTURAL MARKETING SERVICE REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW REGULATORY FLEXIBILITY ACT

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 Part 46; Sec. 15, 46 Stat. 537; 7 U.S.C. 499o	Perishable Agricultural Commodities Act, 1930	1930/Regs Amended 1997.	2008
7 Part 60; 7 U.S.C. 1621 *et seq.*	Country of Origin Labeling for Fish and Shellfish	2004	2014
7 Part 205; 7 U.S.C. 6501–6522	National Organic Program	2000	2010
7 Part 905; 7 U.S.C. 6501–674	Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.	1939	2007
7 Part 923; 7 U.S.C. 601–674	Sweet Cherries Grown in Designated Counties in Washington.	1957	2007
7 Part 925; 7 U.S.C. 601–674	Grapes Grown in a Designated Area of Southeastern California.	1980	2006
7 Part 927; 7 U.S.C. 601–674	Winter Pears Grown in Oregon and Washington	1939	2008

AGRICULTURAL MARKETING SERVICE REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW REGULATORY FLEXIBILITY ACT—Continued

CFR part & authority	AMS program/regulation	Year implemented	Year for review
7 Part 929; 7 U.S.C. 601–674	Cranberries Grown in States of Massachusetts, Rhode Island, etc.	1962	*2005
7 Part 930; 7 U.S.C. 601–674	Tart Cherries Grown in MI, NY, PA, OR, UT, WA & WI	1996	2006
7 Part 948; 7 U.S.C. 601–674	Irish Potatoes Grown in Colorado	1941	2006
7 Part 966; 7 U.S.C. 601–674	Tomatoes Grown in Florida	1955	2008
7 Part 984; 7 U.S.C. 601–674	Walnuts Grown in California	1948	2008
7 Part 996; Secs. 1308, Pub.L. 107–171, 116 Stat. 178 (7 U.S.C. 7958).	Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States.	2003	2010
7 Parts 1000–1139; 7 U.S.C. 601–674	Federal Milk Marketing Orders	1999	2009
7 Part 1150; 7 U.S.C. 4501–4513	Dairy Promotion Program	1984	2006
7 Part 1206; 7 U.S.C. 7 U.S.C. 7411–7425	Mango Promotion, Research, and Promotion Order	2004	2014
7 Part 1207; 7 U.S.C. 2611–2627	Potato Research and Promotion	1972	*2005
7 Part 1209; 7 U.S.C. 6101–6112	Mushroom Promotion, Research and Consumer Information Order.	1993	*2005
7 Part 1215; 7 U.S.C. 7481–7491	Popcorn Promotion, Research and Consumer Information.	1997	2007
7 Part 1216; 7 U.S.C. 7401–7425	Peanut Promotion, Research, and Information Order	1999	2009
7 Part 1218; 7 U.S.C. 7401–7425	Blueberry Promotion, Research, and Information Order	2000	2010
7 Part 1219; 7 U.S.C. 7801–7813	Hass Avocado Promotion, Research, and Information	2003	2010
7 Part 1220; 7 U.S.C. 6301–6311	Soybean Promotion, Research and Consumer Information.	1991	*2005
7 Part 1230; 7 U.S.C. 4801–4819	Pork Promotion, Research, and Consumer Information	1986	2008
7 Part 1240; 7 U.S.C. 4601–4612	Honey Research, Promotion, and Consumer Information Order.	1987	2008
7 Part 1250; 7 U.S.C. 2701–2718	Egg Research and Promotion	1976	*2005
7 Part 1260; 7 U.S.C. 2901–2911	Beef Promotion and Research	1986	2007

*A notice was published in the **Federal Register** announcing this review. The agency expects to publish a summary later this year.

[FR Doc. 06–2896 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC03

Common Crop Insurance Regulations; Mint Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Correction; Reopening and Extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is extending the comment period for the proposed rule that was published in the **Federal Register** on Monday, February 6, 2006 (71 FR 6016–6021). The proposed rule was to amend 7 CFR part 457 to add to a new § 457.169 that provides insurance for mint. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. This action will correct the electronic mail address, and allow interested persons additional time to prepare and submit comments.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business April 24, 2006, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled ''Mint Crop Insurance Provisions'' may be sent via the Internet to *DirectorPDD@rma.usda.gov,* or the Federal eRulemaking Portal: *http://www.regulations.gov/*. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

On Monday, February 6, 2006, FCIC published a proposed rule with request for comments in the **Federal Register** to add to 7 CFR part 457, the Common Crop Insurance Regulations, a new § 457.169 that will provide insurance for mint. The effect of the proposed rule was to convert the mint pilot crop insurance program to a permanent crop insurance program.

Comments were required to be received on or before April 7, 2006. FCIC has been informed the e-mail address listed on the proposed rule and the Federal eRulemaking Portal address were not operational at the time the proposed rule was published. Therefore, FCIC is reopening and extending the comment period until close of business April 24, 2006. This action will allow interested persons who were unable to submit comments additional time to submit comments.

Signed in Washington, DC on March 16, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–2893 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23895; Airspace Docket No. 06–AEA–01]

Establishment of Class E Airspace; Tyler Memorial Hospital, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Tyler Memorial Hospital, PA. The development of an Area Navigation (RNAV), Standard Instrument Approach Procedures (SIAP) and Helicopter RNAV 206 approach for the Tyler Memorial Hospital to serve flights operating into the airport during Instrument Flight Rules (IFR) conditions makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing an approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 24, 2006.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. FAA–2006–23895; Airspace Docket No. 06–AEA–01, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–23895; Airspace Docket No. 06–AEA–01''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Tyler Memorial Hospital, PA. The development of SIAPs to serve flights operating into the airport during IFR conditions makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 Federal Aviation Administration Order 7400.9N dated September 1, 2005, and effective September 15, 2005, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA PA E5 Tyler Memorial Hospital, [New]

Tunkhannock, Pennsylvania
(Lat. 41°34′42″ N., long. 75°58′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0 mile radius of the Tyler Memorial Hospital, Tunkhannock, PA.

Issued in Jamaica, New York on March 2, 2006.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 06–2877 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24064; Airspace Docket No. 06–AWP–3]

RIN 2120–AA66

Proposed Revision of Class E Airspace; Vandenberg AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Vandenberg AFB, CA. During a review of this airspace, it was determined that additional controlled airspace was needed for Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Procedures. This airspace change will place aircraft in controlled airspace from final descent to runway and protect Category E aircraft while conducting a circling approach to land.

DATES: Comments must be received on or before May 8, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–24064; Airspace Docket No. 06–AWP–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Area Director, Terminal Operations, Western Service Area, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California, 90261.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Airspace Specialist, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–24064; Airspace Docket No. 06–AWP–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarized each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents's Web page at *http://www.gpoaccess.gov/fr/index.html.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E5 700 foot airspace at Vandenberg AFB, CA. Class E5 airspace areas are primarily designated to provide additional controlled airspace ancillary to a surface area to protect instrument operations for the primary airport, without imposing additional communications burdens on airspace users. This action is necessary at Vandenberg AFB to provide controlled airspace Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Procedures. Generally, Category E aircraft are very large and/or high performance. These aircraft require additional airspace when conducting circling maneuvers.

Class E5 airspace areas are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, 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 Vandenberg AFB, CA [REVISED]

Vandenberg AFB Airport
(Lat. 34°43′47″ N., long. 120°34′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of the Vandenberg AFB airport and within 1.8 miles each side of the Vandenberg AFB ILS localizer southeast course, extending from 7.8 miles to 10.3 miles southeast of the Vandenberg AFB airport, excluding the Vandenberg Class D airspace, the Santa Maria Class D airspace, the Lompoc Class E4 surface area airspace, and the Lompoc Class E 700 foot airspace.

* * * * *

Issued in Los Angeles, California, on March 14, 2006.

Leonard A. Mobley,

Manager, Airspace Branch, AWP–520 Western Terminal Operations

[FR Doc. 06–2878 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–0AR–2005–NC–0002–200538(b); FRL–8049–3]

Approval and Promulgation of Implementation Plans; North Carolina: Charlotte, Raleigh-Durham, and Winston-Salem Areas Second 10-Year Maintenance Plan for the Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted in final form on March 23, 2005. The SIP revision provides the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Carbon Monoxide Maintenance Areas, which are composed of the following four counties: Mecklenburg (Charlotte Area); Durham and Wake (Raleigh-Durham Area); and Forsyth (Winston-Salem Area). The second 10-year maintenance plan includes new motor vehicle emissions budgets (MVEBs) for carbon monoxide for the year 2015. EPA is proposing to approve this SIP revision, including the new 2015 MVEBs for carbon monoxide, because it satisfies the requirement of the Clean Air Act for the second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas.

In addition, in this rulemaking, EPA is providing information on its transportation conformity adequacy determination for new MVEBs for the year 2015 that are contained in the second 10-year carbon monoxide maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem Areas. EPA determined that the 2015 MVEBs are adequate through a previous action.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before April 24, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–0AR–2005–NC–0002, by one of the following methods:

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

2. E-mail: *wood.amanetta@epa.gov*.

3. Fax: (404) 562–9019.

4. Mail: ''EPA–R04–0AR–2005–NC–0002'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

5. Hand Delivery or Courier: Amanetta Wood of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amanetta Wood's telephone number is (404) 562–9025. Ms. Wood can also be reached via electronic mail at *wood.amanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: March 14, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 06–2869 Filed 3–23–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 57

Friday, March 24, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was filed by the Olive Growers Council, Visalia, California. California olive producers are no longer eligible for TAA benefits in fiscal year 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of non-green olives (canned black olives) fell by 7 percent. Therefore, imports were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 6, 2006.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. E6–4246 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Tonto National Forest, USDA Forest Service.

ACTION: Notice of new fee site.

SUMMARY: The Tonto National Forest will begin charging fees for the Timber Camp Recreation Site. Fees paid at similar recreation sites on the Tonto National Forest have shown that publics appreciate and enjoy the availability of campgrounds, picnic sites and horse camps and are willing to pay reasonable fees for use of such sites. The fee rates will be $10 per vehicle per night for camping in family/horse camp units and $60 per unit per night for group sites. Funds from fees will be used for the operation and maintenance of Timber Camp Recreation Site.

DATES: Timber Camp Recreation Site will become available for use in September, 2006.

ADDRESSES: Forest Supervisor, Tonto National Forest, 2324 E McDowell Rd., Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT: Dave Killebrew, Recreation Fee Coordinator, 602–225–5239.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Tonto National Forest currently charges recreation fees at over 80 locations. A business analysis and past history has shown that people expect to pay for recreation experiences such as camping, boating, swimming and picnicking at developed sites on the Tonto National Forest. A market analysis indicates that the proposed fees for Timber Camp are both reasonable and acceptable for this sort of recreation experience.

Dated: March 16, 2006.

Gene Blankenbaker,

Tonto National Forest Supervisor.

[FR Doc. 06–2858 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must be Received on or Before: April 23, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: *For Further Information or to Submit Comments Contact:* Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the

statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services,5A NYC Terminal Market,USDA, AMS F&V Division, Bronx, New York.

NPA: The Corporate Source, Inc., New York, New York.

Contracting Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, MN.

Service Type/Location: Document Destruction, Internal Revenue Service,NISH, Vienna, VA (PRIME CONTRACTOR).

Performance to be allocated to the Nonprofit Agencies identified at the following locations: 2945 Rodeo Park Drive, East, Santa Fe, New Mexico.

NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.

330 N. Brand Boulevard, Glendale, California.

6377 Riverside Avenue, #110, Riverside, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California.

Contracting Activity: U.S. Treasury, IRS, San Francisco, California.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Base Supply Center,Roosevelt Roads Naval Station,Building 1207, Ceiba, Puerto Rico.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contracting Activity: Department of the Navy.

Service Type/Location: Office Supply Center, Richard Bolling Federal Building,601 East 12th Street, Kansas City, Missouri.

NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Contracting Activity: U.S. Army Corps of Engineers, Kansas City, Missouri.

Service Type/Location: Office Supply Store, Defense Supply Service—Washington,Army Material Command, Alexandria, Virginia.

NPA: Virginia Industries for the Blind, Charlottesville, Virginia.

Contracting Activity: Defense Supply Service, Washington DC.

Service Type/Location: Office Supply Store, Department of Energy, 80300 Century Blvd, Germantown, Maryland.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contracting Activity: Department of Energy, Washington, DC.

Service Type/Location: Office Supply Store, Department of Housing and Urban Development,Robert A. Young Building,1222 Spruce Street, St. Louis, Missouri.

NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Contracting Activity: U.S. Department of Housing and Urban Development, St. Louis, Missouri.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–4292 Filed 3–23–06; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 8–2006

Foreign–Trade Zone 202 - Los Angeles, CA, Application for Subzone, Sharp Electronics Corporation, Correction

The **Federal Register** notice (71 FR 12676, 3/13/2006) describing the application by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting special–purpose subzone status for the Sharp Electronics Corporation (Sharp) distribution facility, in Huntington Beach, California, is corrected as follows:

Paragraph 2 should read ''The Sharp facility (539,000 sq. ft. of enclosed space on 23.4 acres) is located at 5901 Bolsa Avenue, Huntington Beach, California.''

Dated: March 20, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–4310 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Phaedon Nicolas Criton Constan-Tatos and Assegai Trading (Pty) Ltd.; In the Matter of: Phaedon Nicolas Criton Constan-Tatos (a.k.a. Fred Tatos); 119 Main Road, P.O. Box 30, Plumstead 7800, Cape Town, South Africa; Respondent, and Assegai Trading (Pty) Ltd.: Four Loop Street, P.O. Box 4782, Cape Town 8001, South Africa; Related Person

Order Making Order Denying Export Privileges of Phaedon Nicholas Criton Constan-Tatos (a.k.a. Fred Tatos) Applicable to Related Person Assegai Trading (Pty) Ltd.

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the Denial Order that was imposed against the individual Phaedon Nicholas Criton Constan-Tatos (a.k.a. Fred Tatos) (''Tatos'') on November 15, 2005 (70 FR 69311) applicable to the following entity (hereinafter, the ''Related Person''), as a person related to Tatos: Assegai Trading (Pty) Ltd., Four Loop Street, P.O. Box 4782, Cape Town 8001, South Africa.

Section 766.23 of the EAR provide that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges * * *.'' 15 CFR 766.23(a).

On November 15, 2005, an Order pursuant to Part 766 of the EAR imposing a five-year denial of export privileges against the individual Phaedon Nicholas Criton Constan-Tatos (a.k.a. Fred Tatos), Suburban Guns (Pty) Ltd., 119 Main Road, P.O. Box 30, Plumstead 7800, Cape Town, South Africa was published in the **Federal Register** to conclude administrative charges pending against Tatos related to his violation of a Denial Order previously imposed against Suburban Guns (Pty) Ltd. *See* 70 FR 69311 (Nov. 15, 2005). This Order is an order that may be made applicable to related persons pursuant to Section 766.23.

BIS has presented evidence that indicates that the Related Person is

related to Tatos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this entity to the Denial Order imposed against Tatos in order to avoid evasion of that Order.

BIS notified the Related Person of its plans to take this action on December 15, 2005. Specifically, BIS provided notice to three individuals who were believed to be associated with the Related Person. In response, Tatos submitted comments on behalf of the Related Person stating that he was related to it by reason of being its business and company director. Tatos further stated that he did not believe it was appropriate to make the Denial Order imposed against him applicable to the Related Person. BIS also received comments from a second individual, who also stated that the Related Person is operated by Tatos.

It is my belief that Tatos' past actions of violating the Denial Order imposed against Suburban Guns (Pty) Ltd. and his justification for committing those violations indicate that he is prepared to take steps to both violate and evade orders issued against him by BIS. Accordingly, I find that it is necessary to make the Order imposed against Tatos applicable to the Related Person to prevent the evasion of that Order.

It is now therefore ordered,

First, that having been provided notice and opportunity for comment as provided in Section 766.23 of the Export Administration Regulations (the ''Regulations''), the following party (''Related Person'') has been determined to be related to Phaedon Nicholas Criton Constan-Tatos (a.k.a. Fred Tatos), Suburban Guns (Pty) Ltd., 119 Main Road, P.O. Box 30, Plumstead 7800, Cape Town, South Africa (''Tatos'') by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Tatos applicable to this Related Person in order to prevent evasion of the Order: Assegai Trading (Pty) Ltd., Four Loop Street, P.O. Box 4782, Cape Town 8001, South Africa.

Second, that the denial of export privileges described in the Order against Tatos, which was published in the **Federal Register** on November 15, 2005 at 70 FR 69,311, shall be made applicable to the Related Person until its expiration on November 15, 2010, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Related Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be published in the **Federal Register** and a copy provided to the Related Person.

This Order is effective upon publication in the **Federal Register**.

Entered this 17th day of March, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E6–4267 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 2006.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''), received before February 28, 2006, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is July 16, 2004, through January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Nicole Bankhead, 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) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain frozen warmwater shrimp from Vietnam was published in the **Federal Register** on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 05152 (February 1, 2005) (''*Vietnam Shrimp Order*'').[1] On January 31, 2006, pursuant to 19 CFR 351.214(c), the Department received a new shipper review request from Grobest & I–Mei Industrial (Vietnam) Co., Ltd. (''Grobest''). On February 24, 2006, the Department requested that Grobest correct certain filing deficiencies. *See* the Department's letter dated February 24, 2006. On February 28, 2006, Grobest resubmitted its new shipper request. Grobest certified that it is both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930 as amended (''the Act''), and 19 CFR 351.214(b)(2)(i), Grobest certified that it did not export frozen warmwater shrimp to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Grobest certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported frozen warmwater shrimp to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Grobest also certified that its export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Grobest submitted documentation establishing the following: (1) the date on which Grobest first shipped frozen warmwater shrimp for export to the United States and the date on which the frozen warmwater shrimp was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment;[2] and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to confirm that Grobest's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Grobest's request meets the threshold requirements for initiation of a new shipper review for the shipment of frozen warmwater shrimp from Vietnam it produced and exported. *See Memo to the File from Nicole Bankhead, Case Analyst, through James C. Doyle, Office Director, Office 9: New Shipper Review Initiation Checklist*, dated March 17, 2006.

The POR for this new shipper review is July 16, 2004, through January 31, 2006. *See* 19 CFR 351.214(g)(1)(ii)(A). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Because Grobest has certified that it produced and exported the frozen warmwater shrimp upon which it based its request for a new shipper review, the Department will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of frozen warmwater shrimp that was both produced and exported by Grobest until the completion of the new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: March 17, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–4312 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] Therefore, a request for a new shipper review based on the anniversary month, February, was due to the Department by the final day of February 2006. *See* 19 CFR 351.214(d)(1).

[2] Grobest made no subsequent shipments to the United States, which the Department corroborated using data from U.S. Customs and Border Protection.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey: Notice of Court Decision Not In Harmony with Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 13, 2006, the United States Court of International Trade (the Court) sustained the final remand redetermination made by the Department of Commerce (the Department) pursuant to the Court's remand of the final results of the 2002–2003 administrative review of certain steel concrete reinforcing bars from Turkey. *See Colakoglu Metalurji A.S. v. United States*, Court No. 04–00621, Slip Op. 06–36 (CIT Mar.13, 2006) (*Colakoglu Remand*). This case arises out of the Department's *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (Nov. 8, 2004) (*Final Results*). The final judgment in this case was not in harmony with the Department's November 2004 *Final Results*.

EFFECTIVE DATE: March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, 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) 482–0656 or (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION: In *Colakoglu Metalurji A.S. v. United States*, 394 F. Supp. 2d 1379 (CIT 2005), the Court remanded the Department's determination in the final results for further review based on the Department's request to reconsider what constitutes the appropriate U.S. date of sale for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively ''Colakoglu''), a Turkish exporter/producer of subject merchandise.

On November 18, 2005, the Department issued the draft results of redetermination pursuant to remand (draft results) for comment by interested parties. In the draft results, the Department explained that upon reconsideration of the date–of-sale methodology used for Colakoglu, it found that the material terms of sale for Colakoglu's U.S. sales were established

at the ''order'' date. Therefore, the Department stated that it would recalculate the margin using Colakoglu's reported ''order'' date as the date of sale.

On November 28, 2005, the Department received comments on the draft results from Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation (collectively ''the petitioners''). On November 30, 2006, the Department received rebuttal comments from Colakoglu. On January 13, 2006, the Department issued its final results of redetermination pursuant to remand to the Court. After analyzing the comments submitted by interested parties, we continued to find that the appropriate date of sale for Colakolgu's U.S. sales for the time period in question was the ''order'' date. Accordingly, Colakoglu's antidumping duty margin percentage for the 2002–2003 period of review is 4.91 percent.

On March 13, 2006, the Court found that the Department complied with the Court's remand order and sustained the Department's remand redetermination. *See Colakoglu Remand*.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's decision in *Colakoglu Remand* on March 13, 2006, constitutes a final decision of that court that is not in harmony with the Department's final results in the 2002–2003 administrative review of certain steel concrete reinforcing bars from Turkey. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, pending a final and conclusive court decision.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 20, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–4311 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. No. 031606B]

Endangered and Threatened Wildlife and Plants: Announcement of Initiation of a Status Review of the Cook Inlet Beluga Whale under the Endangered Species Act (ESA)

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

ACTION: Notice; request for information.

SUMMARY: We, NOAA's National Marine Fisheries Service (NMFS), intend to review the status of the Cook Inlet beluga whale pursuant to the ESA to determine if this group of beluga whales should be listed as an endangered or threatened species. We previously reviewed the status of these whales in 1998, and in 2000 concluded that a listing under the ESA was not warranted at that time. We solicit information to be used in reassessing the status of the Cook Inlet beluga whale.

DATES: Comments and information must be received by April 24, 2006.

ADDRESSES: Comments and information should be sent to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Region, Attn: Ellen Walsh. Comments may be submitted by:

(1) Mail: P.O. Box 21668, Juneau, AK 99802–1668;

(2) Hand Delivery to the Federal Building: 709 West 9thStreet, Room 420A, Juneau, AK;

(3) FAX: 907–586–7557; or

(4) Email:*CIB-ESA-Status-Review@noaa.gov*. Include in the subject line of the email the following document identifier: CI Belugas Status Review. Email comments, with or without attachments, are limited to five (5) megabytes.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS Alaska Region, Anchorage Field Office, (907) 271-5006, Kaja Brix, NMFS, Alaska Region, (907) 586-7235, or Marta Nammack, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION: ESA section 4 contains provisions and procedures for adding and removing species to the lists of endangered and threatened species. In particular, section 4(a) provides that NMFS shall determine whether any species is threatened or endangered because of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

Pursuant to the ESA, and in response to petitions from external organizations, we reviewed the status of the Cook Inlet beluga whale under the ESA. We determined in 2000 that this group is a distinct population segment (DPS) and, thus, a separate ≥species≥ as defined by the ESA. We also determined that listing the Cook Inlet beluga whale DPS as a threatened or endangered species was not warranted at that time (65 FR 38778; June 22, 2000).

Between 1994, when we initiated abundance surveys for the stock, and 1998, the Cook Inlet beluga whale population declined from an estimated 673 animals to an estimated 347 animals. We stated that the population was likely declining when the 1994 abundance was estimated, and the historical abundance was likely more than 1,000 animals. Subsistence harvest in 1995-1997 was estimated at 87 whales per year, and we concluded this level of harvest accounted for the observed decline of the population. At the time, no other factors could be identified as having a significant effect on the beluga population. Because there was an adequate regulatory mechanism in place to address subsistence harvest, we concluded that an ESA listing was not warranted. This determination was based in part on the expectation that the population would increase after the harvest was reduced to sustainable levels.

We are concerned that recovery may not be occurring as expected, and we recognize that long-term persistence at a small population size increases the risk to this population. Therefore, we plan to re-evaluate the status of the Cook Inlet beluga whale DPS under the ESA.

ESA section 4(a)(3) provides that NMFS shall, concurrent with making a determination that a species is threatened or endangered, designate critical habitat for that species. Critical habitat consists of specific areas in which are found physical and biological features essential to the conservation of the species and which may require special management considerations or protection. Cook Inlet beluga whales occur primarily in upper Cook Inlet, where human development and occupation have been extensive. The status review concerns only whether the Cook Inlet beluga whales should be listed. However, if we determine listing

is necessary, we would also determine whether designation of critical habitat is prudent and determinable.

Information Solicited

To ensure the status review is complete and based on the best available scientific and commercial data, we solicit information and comments concerning the Cook Inlet beluga whales and the extent to which natural or human factors may be affecting them. We are particularly interested in information that has been collected since 1998, when the previous status review was initiated, or information that was not available for consideration during that status review. We are seeking available information on: (1) Current known range of the Cook Inlet beluga whale, with a particular focus on current and historical habitat use; (2) demographic movements; (3) trends in foraging habits and seasonal prey abundance; (4) trends in environmental contamination; (5) contaminant burdens in prey species, especially salmonids and eulachon; (6) impacts caused by human recreational activities (e.g., boating); (7) current and planned activities and their possible impacts to the Cook Inlet beluga whale (e.g., habitat modification); (8) efforts to protect the Cook Inlet beluga whale or improve its habitat; (9) non-human factors that may have contributed to its decline (i.e., disease, biotoxins, climatic or oceanographic regime shifts); and (10) industry effects from oil and gas, municipal wastewater, commercial fishing, commercial shipping, etc., and associated noise.

Information is available on the Cook Inlet beluga whale at: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm*.

Dated: March 20, 2006.

Jim Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4323 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032006D]

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Overfishing Determination on Yellowfin Tuna; Western and Central Pacific Ocean

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

ACTION: Notice of overfishing determination.

SUMMARY: This action serves as notice that NMFS, on behalf of the Secretary of Commerce, has determined that overfishing is occurring on the yellowfin tuna (*Thunnus albacares*) stock in the western and central Pacific Ocean (WCPO), and requests that the Western Pacific Fishery Management Council (Council) address this overfishing condition pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The intent of this action is to notify interested persons that yellowfin tuna is undergoing overfishing in the WCPO.

SUPPLEMENTARY INFORMATION: The following reprint of the March 16, 2006, letter from NMFS to the Council notifies the Council of a determination that overfishing is occurring on the yellowfin tuna stock in the WCPO, provides background on how NMFS made the determination, provides the legal basis for the Council to act in response to a determination that overfishing is occurring, and requests the Council to take appropriate action to address the overfishing condition.

Mr. Frank McCoy, Sr.,
Chairperson,
Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

Dear Chairman McCoy:

By this letter, NOAA's National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce, notifies the Western Pacific Fishery Management Council (Council) that overfishing is occurring on the yellowfin tuna (*Thunnus albacares*) stock in the western and central Pacific Ocean (WCPO). NMFS requests the Council to take appropriate action pursuant to section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

According to Amendment 8 Supplement to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), effective July 3, 2003 (68 FR 46112, August 5, 2003), the maximum fishing mortality threshold (MFMT) for stocks managed under the Pelagics FMP would be exceeded if the fishing mortality rate exceeded the rate associated with maximum sustainable yield (MSY). The most recent stock assessment (August 2005) on WCPO yellowfin tuna by the Scientific Committee of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, indicates that the then-current rate of fishing mortality ($F_{current}$) is likely to be in excess of the rate associated with MSY (F_{MSY}). For the base case analysis, the assessment results indicate an $F_{current}/F_{MSY}$ ratio of 1.22 with a range from 1.0 to 2.33 for the four analyses using alternative sets of assumptions[1].

The latest estimate of $F_{current}/F_{MSY}$ (1.22) for WCPO yellowfin tuna in 2005 was substantially higher than in the 2004 assessment (0.63)[2]. Scientists at the NMFS Pacific Islands Fisheries Science Center (PIFSC) consider the 2005 assessment model to be an improvement over the 2004 model, and the results to be more reliable. Based on these assessment results and relying on the expertise and advice of the PIFSC Director (October 28, 2005), NMFS has determined that overfishing of the WCPO yellowfin tuna stock is occurring.

The Pacific-wide distribution of yellowfin tuna and the scope of fisheries (international and domestic) exploiting this important species dictate that the U.S. government pursue a strategy to end overfishing through the relevant Regional Fisheries Management Organization, in this instance, the Western and Central Pacific Fisheries Commission (WCPFC). The entire U.S. harvest of yellowfin tuna in the WCPO is only about 4% of the total WCPO catch and the majority of the U.S. harvest is by purse seine vessels fishing within the EEZs of Pacific Island nations (under the authority of the South Pacific Tuna Treaty) or on the high seas. NMFS welcomes the Council's participation as a member of the U.S. Delegation to the WCPFC and looks forward to working with the Council to develop and implement domestic management measures necessary to implement WCPFC decisions. According to Section 304(e) of the MSA, the Council has one year from the date of this notification to prepare and submit an FMP, FMP amendment, or proposed regulations to address the overfishing condition of the yellowfin tuna stock.

Sincerely,

William L. Robinson,
Regional Administrator.

Dated: March 20, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–4322 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–22–P

[1] Hampton, J., P. Kleiber, A. Langley, Y. Takeuchi, and M. Ichinokawa. 2005. Stock assessment of yellowfin tuna in the western and central Pacific Ocean. WCPFC–SA WP–1, 1st Meeting of the Scientific and Committee of the Western and Central Pacific Fisheries Commission, WCPFC–SC1, Noumea, New Caledonia, 8–19 August 2005. July 2005. 79p.

[2] Hampton, J., P. Kleiber, A. Langley, and K. Hiramatsu. 2004. Stock assessment of yellowfin tuna in the western and central Pacific Ocean. WCPF SCTB17 Working Paper SA–1. 17th Meeting of the Standing Committee on Tuna and Billfish, Majuro, Marshall Islands, 9–18 August 2004. July 2004. 74 p.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050412101–6061–02]

Ernest F. Hollings Undergraduate Scholarship Program

AGENCY: Office of Education (OEd), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Scholarship Opportunity.

SUMMARY: NOAA announces the Ernest F. Hollings Scholarship Program for FY 2006, and sets forth eligibility criteria and selection guidelines for the program. The Ernest F. Hollings scholarship program was established through the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). This Scholarship Program will provide undergraduate applicants selected for the program with scholarships to study oceanic and atmospheric science, research, technology, and education. There is no guarantee that funds will be available to make awards to all qualified applicants.

The Ernest F. Hollings Scholarship Program will be administered with the assistance of the Department of Energy, Oak Ridge Institute for Science and Education (ORISE).

DATES: Applications for the Ernest F. Hollings Scholarship will be available from ORISE on or about March 17, 2006. Completed applications must be received by 5 p.m. eastern standard time, 30 days after release of this notification.

ADDRESSES: Applications for the Ernest F. Hollings Scholarship Program will be available through ORISE at *http://www.orau.gov/noaa/HollingsScholarship.* If an applicant does not have Internet access, hardcopy applications may be requested by contacting NOAA/Hollings Scholarship, Oak Ridge Institute for Science and Education, P.O. Box 117, MS 36, Attn: Pai Moua, Oak Ridge, TN 37831–0117; Telephone: 865–241–8240.

FOR FURTHER INFORMATION CONTACT: NOAA/Hollings Scholarship, Oak Ridge Institute for Science and Education, Telephone: 865–241–6704 or 301–713–9437 x125.

SUPPLEMENTARY INFORMATION:

Background

The Ernest F. Hollings Scholarship Program was established through the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). The purposes of the program include: (1) To increase undergraduate training in oceanic and atmospheric science, research, technology, and education and to foster multidisciplinary training opportunities; (2) to increase public understanding and support for stewardship of the ocean and atmosphere and to improve environmental literacy; (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, state and local and tribal levels of government; and, (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

The Hollings Scholarship Program will provide successful undergraduate applicants with awards that include academic assistance (up to a maximum of $8,000 per year) for full-time study during the 9-month academic year; a 10-week, full-time internship position ($650/week) during the summer at a NOAA or affiliated partner facility; and, if reappointed, academic assistance (up to a maximum of $8,000) for full-time study during a second 9-month academic year. The internship between the first and second years of the award provides the Scholars with ''hands-on''/practical educational training experience in NOAA-related scientific, research, technology, policy, management, and education activities. Awards will also include travel expenses to attend a mandatory Hollings Scholarship Program orientation, conferences where students present a paper or poster, and a housing subsidy for scholars who do not reside at home during the summer internship.

Authority

The Ernest F. Hollings Undergraduate Scholarship Program is established by the Administrator of the National Oceanic and Atmospheric Administration under authority of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

Funding Availability

Approximately $3.5 million will be available for the award of a maximum of 100 two-year scholarships. There is no guarantee that funds will be available to provide scholarships for all qualified students.

Eligibility

Any undergraduate student who is a U.S. citizen; enrolled as a full-time student in the Fall 2006 as a junior, at an accredited college or university within the United States or U.S. Territories; possesses at least a cumulative 3.0 grade point average on a 4.0 scale (or equivalent on other identified scale) in all completed undergraduate courses and in their major field of study; and has declared a major in a NOAA-related discipline, including, but not limited to, oceanic, environmental, and atmospheric sciences, mathematics, engineering, remote sensing technology, marine policy, physical and social sciences including, geography, physics, hydrology, meteorology, oceanography or teacher education that support NOAA's programs and mission may apply to this notification.

The Hollings Scholarship Program will consider applications from all students that meet the above eligibility requirements.

Evaluation Criteria

Application will be evaluated based on the following criteria:

1. Relevant coursework (30%).
2. Education plan and statement of career interest (40%).
3. Recommendations and/or endorsements (reference forms) (20%).
4. Additional relevant experience related to diversity of education; extracurricular activities; honors and awards; non-academic and volunteer work; written and oral communications skills (10%).

Selection Process

An initial administrative review of applications is conducted to determine compliance with requirements and completeness of applications. Only complete applications in compliance with the requirements will be considered for review. Applications identified as incomplete or not in compliance with the requirements will be destroyed. All applications that meet the requirements and are complete will be evaluated and scored individually in accordance with the assigned weights of the evaluation criteria by an independent peer review panel. A numerical ranking will be assigned to each application based on the average of the panelist's ratings. The Program Officer will conduct a review of the rank order and make recommendations to the Selecting Official based on the panel ratings and the selection factors listed below. The Selecting Official, the Director of NOAA Education, will

consider merit reviews and recommendations and award in rank order unless the application is justified to be selected out of rank order based on one or more of the following selection factors:

Selection Factors

In determining final awards, the selecting official reserves the right to consider the following selection factors:

1. Availability of funds.
2. Balance/distribution of funds:
   a. Geographically.
   b. By type of institutions.
   c. Across academic disciplines.
3. Program-specific objectives.
4. Degree in scientific area and type of degree sought.

Repayment Requirement

A Hollings Scholarship recipient shall be require to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if it is determined that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.

Cost Sharing Requirements

There are no cost-sharing requirements.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of federal programs.''

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2006 program is contingent upon the availability of Fiscal Year 2006 appropriations.

National Environmental Policy Act (NEPA)

As defined in sections 5.05 and Administrative or Programmatic Functions of NAO 216–6, 6.03.c.3, this is an undergraduate scholarship and internship program for which there are no cumulative effects. Thus, it has been categorically excluded from the need to prepare an Environmental Assessment.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The Hollings Undergraduate Scholarship application form has been approved under OMB Control No. 1910–5125.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (FEDERALISM)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 20, 2006.

George E. White,

Acting Deputy Undersecretary for Oceans and Atmosphere, U.S. Department of Commerce.

[FR Doc. E6–4320 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112505C]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Eastern Tropical Pacific

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

ACTION: Notice; issuance of incidental harassment authorization

SUMMARY: In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Scripps Institution of Oceanography (SIO) to take marine mammals by Level B harassment incidental to conducting a marine seismic survey in the Eastern Tropical Pacific Ocean (ETP).

DATES: Effective from March 10, 2006, through March 9, 2007.

ADDRESSES: A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.≥

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can

apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 2, 2005, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the ETP during March-April, 2006. The purpose of the seismic survey is to collect the site survey data for a future Integrated Ocean Drilling Program (IODP) drilling transect (not currently scheduled). The proposed drilling program will study the structure of the Cenozoic equatorial Pacific by drilling an age-transect flowline along the position of the paleo-equator in the Pacific, targeting selected time-slices of interest where calcareous sediments have been preserved best. The seismic survey and respective drilling transect will span the early Eocene to Miocene equatorial Pacific. Recovered sediments will: (1) contribute towards resolving questions of how and why paleo-productivity of the equatorial Pacific changed over time, (2) provide rare material to validate and extend the astronomical calibration of the geological time scale for the Cenozoic, (3) determine sea-surface and benthic temperature and nutrient profiles and gradients, (4) provide important information about the detailed nature of calcium carbonate dissolution (CCD) and changes in the CCD, (5) enhance understanding of bio- and magnetostratigraphic datums at the equator, as well as (6) provide information about rapid biological evolution and turn-over during times of climatic stress. As SIO's strategy also implies a paleo-depth transect, they also hope to improve knowledge about the reorganization of water masses as a function of depth and time. Last, SIO intends to make use of the high level of correlation between tropical sediment sections and seismic stratigraphy collected on the survey cruise to develop a more complete model of equatorial circulation and sedimentation.

Description of the Activity

The seismic survey will utilize one source vessel, the R/V *Roger Revelle*, which is scheduled to depart from Papeete, French Polynesia, on or about March 03, 2006, and will return to port in Honolulu, Hawaii on or about April 01, 2006. The exact dates of the activity may vary by a few days because of weather conditions, repositioning, streamer operations and adjustments, airgun deployment, or the need to repeat some lines if data quality is substandard. The overall area within which the seismic survey will occur is located between approx. 20° N and 10° S, and between approx. 100° and 155° W. The survey will be conducted entirely in international waters.

The R/V *Roger Revelle* will deploy a pair of low-energy Generator-Injector Guns (GI guns) as an energy source (each with a discharge volume of 45 in3), plus a 450 m-long (1476 ft-long), 48–channel, towed hydrophone streamer. As the GI guns are towed along the survey lines, the receiving system will acquire the returning acoustic signals. The program will consist of approximately (approx.) 8,900 km (4,800 nm) of survey, including turns. Water depths within the study area are 3,900 to 5,200 m (12,800 to 16,700 ft). The seismic source will be operated along the single track line en route between piston-coring sites, where seismic data will be acquired on a small scale grid and cores will be collected. There will be additional operations associated with equipment testing, start-up, line changes, and repeat coverage of any areas where initial data quality is sub-standard. The vessel will be self-contained and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the pair of GI guns, a Kongsberg Simrad EM–120 multibeam echosounder, a 3.5 kHz sub-bottom profiler, and passive geophysical sensors (gravimeter and magnetometer) will be operated continuously throughout the entire cruise.

Vessel Specifications

The R/V *Roger Revelle* is owned by the U.S. Navy Office of Naval Research (ONR) and operated by SIO under a charter agreement. The R/V *Roger Revelle* has a length of 83 m (273 ft), a beam of 16 m (53 ft), and a maximum draft of 5.2 m (17 ft). The ship is powered by two 3000 hp Propulsion General Electric motors and a 1180 hp retracting azimuthing bow thruster. Typical operation speed of approx. 13 km/h (7 knots) is used during seismic acquisition. When not towing seismic survey gear, the R/V *Roger Revelle* cruises at 22 km/h (12 knots) and has a maximum speed of 28 km/h (15 knots). It has a normal operating range of approx. 27780 km (15,000 nm).

The R/V *Roger Revelle* holds 22 crew plus 37 scientists and will also serve as the platform from which marine mammal observers will watch for marine mammals before and during GI gun operations.

Seismic Source Description

The R/V *Roger Revelle* will tow the pair of GI guns and a streamer containing hydrophones along predetermined lines. Seismic pulses will be emitted at intervals of 6–10 seconds. At a speed of 7 knots (13 km/h), the 6–10–s spacing corresponds to a shot interval of approx. 22–36 m (71–118 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the water, is 45 in^3(737 cm^3). The larger (105 in^3 (1721 cm^3)) injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two 45 in^3 (737 cm^3) GI guns will be towed 8 m (26 ft) apart side by side, 21 m (69 ft) behind the R/V *Roger Revelle*, at a depth of 2 m (7 ft). Specifications for the GI guns are as follows.

The two GI guns discharge a total volume of approx. 90 in^3 (1475 cm^3) and the dominant frequency components are 1–188 Hz. The source output (downward) is 7.2 bar-m (237 dB re 1 microPascal-m) at 0–peak (0–pk) and 14.0 bar-m (243 dB re 1 microPascal-m) at peak-peak (pk-pk). The nominal downward-directed source levels indicated above do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m from a hypothetical point source emitting the same total amount of sound as is emitted by the combined GI guns. The actual received level at any location in the water near the GI guns will not exceed the source level of the strongest individual source. In this case, that will be about 231 dB re 1 microPa-m peak, or 237 dB re 1 microPa-m pk-pk. Actual

levels experienced by any organism more than 1 m from either GI gun will be significantly lower.

A further consideration is that the rms (root mean square) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or pk-pk values normally used to characterize source levels of seismic sources. The measurement units used to describe seismic sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000a). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for a seismic source.

NMFS has established the following acoustic criteria for non-explosive sounds: Level A Harassment (PTS) - 180 dB re 1 microPa-m (rms) for cetaceans and 190 dB re 1 microPa-m (rms) for pinnipeds; and Level B Harassment (TTS) - 160 dB re 1 microPa-m (rms) for all marine mammals. NMFS uses the isopleths of these sound levels to estimate where Level A Harassment and Level B Harassment take of marine mammals occurs and to establish safety zones within which monitoring or mitigation measures must be applied.

Received sound levels have been modeled by the Lamont-Doherty Earth Observatory (L-DEO) for two 105 in^3 (1721 cm^3) GI guns in relation to distance and direction from the source. The model does not allow for bottom interactions, and is most directly applicable to deep water (such as will be ensonified in this survey). Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 160, 180, and 190 dB re 1 microPa (rms) are predicted to be received are as follows: 160 dB out to 510 m (1673 ft); 180 dB out to 54 m (177 ft); and 190 dB out to 17 m (56 ft). Because the model results are for the larger 105 in^3 (1721 cm^3) GI guns, those distances are overestimates of the distances for the two 45 in^3 (737 cm^3) GI guns used in this study and, therefore, are considered conservative.

Empirical data concerning the 160– and 180–dB distances have been acquired based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that radii around the GI guns where the received level would be 180 dB re 1 microPa (rms) vary with water depth. Similar depth-related variation is likely in the 190 dB distances applicable to pinnipeds. The empirical data indicate that, for deep water (≤1,000 m (3,281 ft)), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy et al., 2004). However, to be precautionary pending acquisition of additional empirical data, the safety radii during seismic operations in the deep water of this study will be the values predicted by L-DEO's model. Therefore, the assumed 180- and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively.

Bathymetric Sonar

Along with the GI-gun operations, two additional acoustical data acquisition systems will be operated during much or all of the cruise. One of the instruments used to map the ocean floor will be the Kongsberg Simrad EM–120 multi-beam echosounder, which is commonly operated simultaneously with GI guns.

The nominal transmit frequency of the Kongsberg Simrad EM–120 is 12 kHz with an angular coverage sector of up to 150 degrees and 191 beams per ping. The transmit fan is split into several individual sectors with independent active steering according to vessel roll, pitch and yaw. This method places all soundings on a ''best fit'' to a line perpendicular to the survey line, thus ensuring a uniform sampling of the bottom and 100 percent coverage. The sectors are frequency coded (11.25 to 12.60 kHz), and are transmitted sequentially at each ping. Pulse length and range sampling rate are variable with depth for best resolution, and in shallow waters due care is taken to the near field effects. The ping rate is primarily limited by round trip travel time in water, up to a ping rate of 5 Hz in shallow water. A pulse length of 15 ms is typically used in deep water. The transmit fan is split into nine different sectors transmitted sequentially within the same ping. Using electronic steering, the sectors are individually tilted alongtrack to take into account the vessel's current roll, pitch and yaw with respect to the survey line heading. The manufacturer provided information to show relevant parameters for their multibeam echosounders. For the model EM–120, with a one degree beamwidth (BW), the pressure levels at a set of fixed distances are as follows: 211 dB at 1 m (2.9 ft); 205 dB at 10 m (29 ft); 195 dB at 100 m (287 ft); and 180 dB at 1,000 m (3,280 ft). Note that the pressure levels are worst case, i.e. on-axis and with no defocusing. For purposes of this survey the on-axis direction is vertical from the ship to the sea floor. The pressure level for sound traveling off-axis will fall rapidly for a narrow beam (alongtrack for a multibeam echosounder). The level will reduce by 20 dB at a little more than twice the beamwidth, which is 1 degree for the system installed on R/V *Roger Revelle*. Acrosstrack, the pressure level will typically reduce by 20 dB for angles of more than 75–80° from the vertical. For multibeams which use sectorized transmission, such as most current Kongsberg Simrad systems, beam defocusing is applied in the central sector(s) in shallow waters which results in a more rapid reduction in the pressure level. There will be a similar reduction for the outer sectors in flat arrays, as used with the EM–120, due to the virtual shortening of the array width in these directions.

The pressure level at 1 m (2.9 ft) is less for the Kongsberg Simrad EM–120 multibeam echosounder (211 dB) than it is for the pair of GI guns (237 dB) used in this study. However, due to the very narrow (1o) directivity of the beam, the distance from the transducer at which 180 dB re 1 microPa-m is encountered is larger (1,000 m (3,280 ft)) than that calculated for the GI guns (54 m (177 ft)). Conversely, the narrowness of the beam, the short pulse length, the ping rate, and the ship's speed during the survey greatly lessens the probability of exposing an animal under the ship during one ping of the multibeam echosounder, much less for multiple pings. Since the 1o beam of sound is directed downward from transducers permanently mounted in the ship's hull, the horizontal safety radius of 54 m (177 ft) for 180 dB established for the GI guns will encompass the entire area ensonified by the multibeam echosounder, as well, and marine mammals takes by the echosounder will be avoided through the mitigation measures discussed later.

Sub-bottom Profiler

A sub-bottom profiler will also be used simultaneously with the GI guns to map the ocean floor. The Knudsen Engineering Model 320BR sub-bottom profiler is a dual frequency transceiver designed to operate at 3.5 and/or 12 kHz. It is used in conjunction with the multibeam echosounder to provide data about the sedimentary features which occur below the sea floor. The maximum power output of the 320BR is 10 kilowatts for the 3.5 kHz section and

2 kilowatts for the 12 kHz section (the 12 kHz section is seldom used in survey mode on R/V *Roger Revelle* due to overlap with the operating frequency of the Kongsberg Simrad EM–120 multibeam).

Using the Sonar Equations and assuming 100 percent efficiency in the system, the source level for the 320BR is calculated to be 211 dB re 1 microPa-m. In practice, the system is rarely operated above 80 percent power level. The pulse length for the 3.5 kHz section of the 320BR ranges from 1.5 to 24 ms, and is controlled automatically by the system.

Since the maximum attainable source level of the 320BR sub-bottom profiler (211 dB re 1 microPa-m) is less than that of the pair of GI guns (237 dB re 1 microPa-m) to be used in this study and the sound produced by the sub-bottom profiler is directed downward from transducers permanently mounted in the ship's hull, the 54 m (177 ft) horizontal safety radius established for the GI guns will encompass the entire area ensonified by the multibeam echosounder, and marine mammals takes by the echosounder will be avoided through the mitigation measures discussed later.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses has been provided in the application and in previous **Federal Register** notices (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)). Reviewers are referred to those documents for additional information.

Comments and Responses

A notice of receipt of the SIO application and proposed IHA was published in the **Federal Register** on January 20, 2006 (71 FR 3260). During the comment period, NMFS received comments from the Marine Mammal Commission (MMC).

Comment 1: The MMC states that because the applicant is requesting authority to take marine mammals by harassment only, NMFS should require that operations be suspended immediately if a dead or seriously injured marine mammals is found in the vicinity of the operations and the death or injury could have occurred incidental to conducting the seismic survey. The MMC further recommends that any such suspension should remain in place until NMFS has (1) reviewed the situation and determined that further mortalities or serious injuries are unlikely to occur, or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with MMC's recommendations and has included a requirement to this effect in the IHA.

Comment 2: The MMC recommends that to improve the ability to observe marine mammals, NMFS should require that SIO not operate airguns after dark.

Response: NMFS has included the following requirement in the IHA:

(SIO must) - Visually observe the entire extent of the safety radius (190 dB for pinnipeds, 180 dB for cetaceans) using two marine mammal observers, at least 30 minutes prior to starting the airguns during the day or at night. If for any reason the entire radius cannot be seen for the entire 30 minutes (i.e. rough seas, fog, darkness), or if marine mammals are near, approaching, or in the safety radius, the airguns may not be started up. If one airgun is already running, SIO may start the second gun without observing the entire safety radius for 30 minutes prior, provided no marine mammals are known to be near the safety radius.

SIO is not authorized to start up the airguns at night unless the MMOs can clearly see the entire safety zone for 30 minutes prior to ramp-up. Once the airguns are operating, NMFS believes that marine mammals will show some level of avoidance, either of the airguns or the approaching vessel, and stay out of the safety radius (54 m (177 ft) at 180 dB). If marine mammals do enter the safety zone while airguns are operating at night, however, observers should be able to see them using NVDs and shut down the airguns immediately.

Comment 3: The MMC states that they would be interested in learning from NMFS or SIO what the probability is that an injured or dead beaked whale or other small cetacean would be sighted from a ship running transects through an area or retracing recently run transect lines.

Response: Because of the cryptic nature of beaked whale behavior and the movement of the R/V *Roger Revelle* during the seismic survey, it is unlikely that a distressed beaked whale or small cetacean would be sighted from a ship running transects through an area. If a ship were to to retrace its recently run transects, the chance of sighting a distressed animal would increase. However, NMFS believes that it is highly unlikely that an marine mammals will be exposed to levels of sound likely to result in Level A Harassment or mortality given the very small safety radii (54 m (177 ft) for 180 dB) around the R/V *Roger Revelle*'s small airguns and the likely effectiveness of the mitigation measures.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the R/V *Roger Revelle*'s track from Papeete, French Polynesia to Honolulu, Hawaii and the associated marine mammals can be found in the SIO application and a number of documents referenced in the SIO application. In the seismic survey region during the late winter and early spring months of 2006, 29 cetacean species are likely to occur, including dolphins, small whales, tooth and baleen whales. Several of these species are listed under the U.S. Endangered Species Act (ESA) as endangered, including sperm whales, humpback whales, and blue whales; fin and sei whales may also occur in the proposed seismic program area. Information on the distribution of these and other species inhabiting the study area and the wider ETP has been summarized by several studies (e.g., Polacheck, 1987; Wade and Gerrodette, 1993; Ferguson and Barlow, 2001; Ferguson and Barlow 2003). Four species of pinnipeds (Guadelupe fur seal, northern elephant seal, South American sea lion, and California sea lion) could potentially be encountered during the proposed survey. However, impacts to pinnipeds are not anticipated due to the decreased likelihood of encountering them in very deep water, the relatively small area to be ensonified, and the likely effectiveness of the proposed mitigation measures in such a small area. The species that may be impacted by this activity and their estimated abundances in the ETP are listed in Table 1.

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Table 1. Species expected to be impacted by the seismic survey in the ETP, their estimated abundance in the area, and the estimated amount of takes by Level B Harassment expected to occur during the seismic survey in the ETP.

Species	Habitat	Abundance Estimate	Authorized Take	Estimated % Stock
Odontocetes				
Sperm whale* (*Physeter macrocephalus*)	Usually pelagic and deep seas	26,053	17	0.07
Pygmy sperm whale (*Kogia breviceps*)	Deeper waters off the shelf	N.A.	0	0
Dwarf sperm whale (*Kogia sima*)	Deeper waters off the shelf	11,200	145	1.29
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	20,000	0	0
Longman's beaked whale (*Indopacetus pacificus*)	Pelagic	N.A.	0	0
Pygmy beaked whale (*Mesoplodon peruvianus*)	Deep waters	25,300	0	0
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)	Likely pelagic	25,300	0	0
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	25,300	182	0.72
Rough-toothed dolphin (*Steno bredanensis*)	Mostly pelagic	145,900	0	0
Bottlenose dolphin (*Tursiops truncatus*)	Coastal and oceanic	243,500	285	0.12
Pantropical spotted dolphin (*Stenella attenuata*)	Coastal and pelagic	2,059,100	3,424	0.17
Spinner dolphin (*Stenella longirostris*)	Coastal and pelagic	1,651,100	627	0.04
Striped dolphin (*Stenella coeruleoalba*)	Off the continental shelf	1,918,000	694	0.04
Short-beaked common dolphin (*Delphinus delphis*)	Continental shelf and pelagic waters	3,093,300	5,275	0.17
Pacific white-sided dolphin (*Lagenorhynchus obliquidis*)	Coastal waters	N.A.	0	0
Dusky Dolphin (*Lagenorhynchus obscurus*)	Coastal and continental shelf waters	N.A.	0	0
Fraser's dolphin (*Lagenodelphis hosei*)	Water deeper than 1000 m	289,300	808	0.28
Risso's dolphin (*Grampus griseus*)	Waters deeper than 1000 m	175,800	573	0.33
Melon-headed whale (*Peponocephala electra*)	Oceanic	45,400	0	0
Pygmy killer whale (*Feresa attenuata*)	Deep, pantropical waters	38,900	0	0
False killer whale (*Pseudorca crassidens*)	Pelagic	39,800	0	0
Killer whale (*Orcinus orca*)	Widely distributed	8,500	8	0.09
Short-finned pilot whale (*Globicephala macrorhynchus*)	Mostly pelagic	160,200	105	0.07
Mysticetes				
Humpback whale* (*Megaptera novaeangliae*)	Mainly near-shore waters and banks	N.A.	0	0
Minke whale (*Balaenoptera acutorostrata*)	Continental shelf, coastal waters	N.A.	0	0
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal	13,000	4	0.03
Sei whale* (*Balaenoptera borealis*)	Primarily offshore, pelagic	N.A.	0	0
Fin whale* (*Balaenoptera physalus*)	Continental slope, mostly pelagic	N.A.	0	0
Blue whale* (*Balaenoptera musculus*)	Pelagic and coastal	1400	2	0.14

* Listed as Endangered under the Endangered Species Act

The marine mammal populations in the seismic survey area have not been studied in detail, but the region is included in the greater ETP, where several studies of marine mammal distribution and abundance have been conducted. The ETP is thought to be a biologically productive area (Wyrtki, 1966), and is known to support a variety of cetacean species (Au and Perryman, 1985).

The center of the ETP is characterized by warm, tropical waters (Reilly and Fiedler 1994). Cooler water is found along the equator and the eastern boundary current waters of Peru and California; this cool water is brought to the surface by upwelling (Reilly and Fiedler, 1994). The two different habitats are generally thought to support different cetacean species (Au and Perryman, 1985). Au *et al.* (1987) noted an association between cetaceans and the equatorial surface water masses in the ETP, which are thought to be highly productive. Increased biological productivity has also been observed due to upwelling at the Costa Rica Dome (Wyrtki, 1964; Fiedler *et al.*,1991).

Several studies have correlated these zones of high productivity with concentrations of cetaceans (Volkov and Moroz, 1977; Reilly and Thayer, 1990; Wade and Gerrodette, 1993). The ETP is also characterized by a shallow thermocline (Wyrtki, 1966) and a pronounced oxygen minimum layer (Perrin *et al.*,1976; Au and Perryman, 1985). These features are thought to result in an ''oxythermal floor'' 20–100 m below the surface, which may cause large groups of cetaceans to concentrate in the warm surface waters (Scott and Cattanach, 1998).

In the application, many references are made to the occurrence of cetaceans in the Galapagos; however, for some species, abundance in the Galapagos can be quite different from that in the wider ETP (Smith and Whitehead, 1999). In addition, references to surveys in the ETP are also made. For example, Polacheck (1987) summarized cetacean abundance in the ETP for 1977–1980, although the season when surveys were carried out was not given. Polacheck (1987) calculated encounter rates as the number of schools sighted per 1,000 mi (1,609 km) surveyed. His encounter rates do not include any correction factors to account for changes in detectability of species with distance from the survey track line or the diving behavior of the animals. Wade and Gerrodette (1993) also calculated encounter rates for cetaceans (number of schools per 1,000 km surveyed) in the ETP, based on surveys between late July and early December from 1986 to 1990. Their encounter rates include a correction factor to account for detectability bias but do not include a correction factor to account for availability bias. Ferguson and Barlow (2001) calculated cetacean densities in the ETP based on summer/fall research vessel surveys in 1986–1996. Their densities are corrected for both detectability and availability biases. Ferguson and Barlow (2003) followed their 2001 report up with an addendum that estimated density and abundance with the respective coefficients of variation, whereas before some species and groups were pooled. Although species encounter rates and densities are generally given for summer/fall, the seismic survey will be conducted in winter/spring 2006.

Potential Effects on Marine Mammals

Summary of Potential Effects of GI Gun Sounds

The effects of sounds from GI guns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.*, 1995). Given the small size of the GI guns planned for the present project, effects are anticipated to be considerably less than would be the case with a large array of airguns. Both NMFS and SIO believe it very unlikely that there will be any cases of temporary or, especially, permanent hearing impairment. Also, behavioral disturbance is expected to be limited to animals that are at distances less than 510 m (1673 ft). A further review of potential impacts of airgun sounds on marine mammals is included in Appendix A of SIO's application.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. However, it should be noted that most of the measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than those planned for use in the present project.

Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy GI gun source planned for use in this project, mammals are expected to tolerate being closer to this source than might be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects (effects that interfere with an animals ability to detect a sound even though the sound is above its absolute hearing threshold) of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002c). Given the small source planned for use here, there is even less potential for masking of baleen or sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the GI guns to be used here. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds. Further information on masking effects may be found in Appendix A(d) of SIO's application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Disturbance is one of the main concerns in this project. In the terminology of the 1994 amendments to the MMPA, seismic noise could cause ''Level B'' harassment of certain marine mammals. Level B harassment is defined as ''any act of pursuit, torment, or annoyance which 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.''

Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, it is difficult to know if the effects are biologically significant, i.e., if they rise to the level of ''disruption of behavioral patterns''. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, it is more likely to be a disruption of a behavioral pattern. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is NMFS' practice to estimate how many mammals will be present within a particular distance of sound-generating activities (or exposed to a particular level of sound) and assume that all of

the animals within that area may have been harassed.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, and small toothed whales. Most of those studies have concerned reactions to much larger airgun sources than planned for use in the present project. Thus, effects are expected to be limited to considerably smaller distances and shorter periods of exposure in the present project than in most of the previous work concerning marine mammal reactions to airguns.

Baleen Whales – Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix A of SIO's application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 microPa (rms) range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4.5–14.5 km (2.4–7.8 nm) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies reviewed in the application have shown that some species of baleen whales, notably bowheads and humpbacks, at times show strong avoidance at received levels lower than 160–170 dB re 1 microPa (rms). Reaction distances would be considerably smaller during the present project, in which the 160 dB radius is predicted to be approx. 0.5 km (0.27 nm), as compared with several kilometers when a large array of airguns is operating.

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Malme *et al.*, 1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987). In any event, the brief exposures to sound pulses from the present small GI gun source are highly unlikely to result in prolonged effects in baleen whales.

Toothed Whales – Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, systematic work on sperm whales is underway.

Seismic operators sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent e.g., Goold, 1996a; Calambokidis and Osmek, 1998; Stone, 2003). Similarly, captive bottlenose dolphins and beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002). However, the animals tolerated high received levels of sound (pk-pk level >200 dB re 1 microPa) before exhibiting aversive behaviors. With the presently-planned pair of GI guns, such levels would only be found within a few meters of the source.

There are no specific data on the behavioral reactions of beaked whales to seismic surveys. However, most beaked whales tend to avoid approaching vessels of other types (e.g., Kasuya, 1986; Wursig *et al.*, 1998). The Joint Interim Report on the Bahamas Marine Mammal Stranding Event of 15–16 March (U.S. Department of Commerce/U.S. Department of the Navy, 2001) reported that intense acoustic signals were the only possible contributory cause to the strandings and cause of the lesions seen in the *Ziphius cavirostris* and *Mesoplodon densirostris* that stranded in the Bahamas that could not be ruled out. The U.S. Navy was conducting mid-frequency sonar at a time that can be correlated with the stranding of these animals. Other mid-frequency sonar exercises have been correlated in time with beaked whale and other cetacean strandings (see Appendix A of SIO's application), however for the many of these, the in-depth analysis of ear and other tissues necessary to completely rule out other possible causes has not been conducted. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonars in operation during the above-cited incidents. There was a stranding of Cuvier's beaked whales in the Gulf of California (Mexico) in September 2002 when the L-DEO vessel *Maurice Ewing* was operating a large array of airguns (20 guns; 8,490 in^3 (139,126 cm^3)) in the general area. This might be a first indication that seismic surveys can have effects similar to those attributed to naval sonars. However, the evidence with respect to that seismic survey and beaked whale stranding is inconclusive.

All three species of sperm whales have been reported to show avoidance reactions to standard vessels not emitting airgun sounds, so it is to be expected that they would also tend to avoid an operating seismic survey vessel. There were some limited early observations suggesting that sperm whales in the Southern Ocean and Gulf of Mexico might be fairly sensitive to airgun sounds from distant seismic surveys. However, more extensive data from recent studies in the North Atlantic suggest that sperm whales in those areas show little evidence of avoidance or behavioral disruption in the presence of operating seismic vessels, McCall Howard 1999; Madsen *et al.*, 2002c; Stone, 2003). An experimental study of sperm whale reactions to seismic surveys in the Gulf of Mexico has been done recently (Tyack *et al.*, 2003).

Odontocete reactions to large arrays of airguns are variable and, at least for small odontocetes, seem to be confined to a smaller radius than has been observed for mysticetes. Thus, behavioral reactions of odontocetes to the small GI gun source to be used here are expected to be very localized, probably to distances <0.5 km (<0.3 mi).

Pinnipeds – Pinnipeds are not likely to show a strong avoidance reaction to the small GI gun source that will be used. Visual monitoring from seismic vessels, usually employing larger sources, has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. Those studies show that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays, even for arrays much larger than the one to be used here (e.g., Harris *et al.*, 2001). However, initial telemetry work suggests that avoidance and other behavioral reactions to small airgun sources may be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances from the vessel (and, therefore, avoidable through implementation of required mitigation measures) and durations, with no long-term effects on pinnipeds.

Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix A (e) of SIO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that in order to avoid hearing impairment, cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB re1 microPa (rms), respectively (NMFS, 2000). Those criteria have been used in defining the safety (shutdown) radii planned for this seismic survey.

Because of the small size of the GI gun source in this project (two 45 in3 guns), along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the pair of GI guns (and multibeam echosounder), and to avoid exposing them to sound pulses that might cause hearing impairment (see Mitigation Measures). In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations (see above). In those cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, it is very unlikely that any effects of these types would occur during the present project given the small size of the source and the brief duration of exposure of any given mammal, especially in view of the planned monitoring and mitigation measures.

TTS – TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little information on sound levels and durations necessary to elicit mild TTS has been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Finneran *et al.* (2002) compared the few available data that exist on sound levels and durations necessary to elicit mild TTS and found that for toothed whales exposed to single short pulses, the TTS threshold appears to be a function of the energy content of the pulse. Finneran used the available data to plot known TTS in odontocetes on a line depicting sound pressure level versus duration of pulse, and SIO used that line to estimate that a single seismic pulse of the duration used in this study (approx. 15 ms) received at 210 dB re 1 microPa (rms) (approx. 221–226 dB pk-pk) may produce brief, mild TTS in odontocetes. If received sound energy is calculated from the sound pressure, a single 15 ms seismic pulse at 210 dB re 1 microPa (rms) equates to ten seismic pulses of the same length at received levels near 200 dB or three seismic pulses of the same length at received levels near 205 dB (rms). The L-DEO model indicates that seismic pulses with received levels of 200–205 dB would be limited to distances within a few meters of the small GI gun source to be used in this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. Richardson *et al.* (1995) compiled studies of the reactions of several species of baleen whales to seismic sound and found that baleen whales often show strong avoidance several kilometers away from an airgun at received levels of 150–180 dB. Given the small size of the source, and the likelihood that baleen whales will avoid the approaching airguns (or vessel) before being exposed to levels high enough to induce TTS, NMFS believes it unlikely that the R/V *Roger Revelle*'s airguns will cause TTS in any baleen whales.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured. However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; cf. Au *et al.*, 2000).

A marine mammal within a radius of 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. As noted above, most cetaceans show some degree of avoidance of operating airguns. In addition, ramping up airgun arrays, which is standard operational protocol for large airgun arrays, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that the cetaceans would be exposed to airgun pulses at a sufficiently high level (180 dB) for a sufficiently long period (due to the tendency of baleen whales to avoid seismic sources) to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. The potential for TTS is very low in this project due to the small size of the airgun array (past IHA's have authorized take of marine mammals incidental to the operation of seismic airguns with a

total volume of up to 8,800 in^3 (L-DEO 20–gun array)) . With a large array of airguns, any TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow riding near airguns, they could potentially be exposed to strong sound pulses, possibly repeatedly. However, in this project, the anticipated 180–dB distance is less than 54 m (less than 155 ft), and the bow of the R/V *Roger Revelle* will be 106 m (304 ft) ahead of the GI guns, so this effect is less likely.

As mentioned earlier, NMFS has established acoustic criteria to avoid PTS that indicate that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 microPa (rms). The predicted 180 and 190 dB distances for the GI guns operated by SIO are less than 54 m (less than 155 ft) and less than 17 m (less than 49 ft), respectively (those distances actually apply to operations with two 105 in^3 GI guns, and smaller distances would be expected for the two 45 in^3 (737 cm^3) GI guns to be used here.). These sound levels represent the received levels above which one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As mentioned previously in the toothed whale section, Finneran *et al.*'s (2000 and 2002) TTS data indicate that a small number of captive dolphins have been exposed to more 200 dB re 1 microPa (rms) without suffering from TTS, though NMFS believes that the sound levels represented by these studies of small numbers of captive animals may not accurately represent the predicted reactions of wild animals under the same circumstances. Scientists at NMFS are currently compiling and reanalyzing available information on the reactions of marine mammals to sound in an effort to eventually establish new more sophisticated acoustic criteria. However, NMFS currently considers the 160, 180, and 190 dB thresholds to be the appropriate sound pressure level criteria for non-explosive sounds.

PTS – When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but NMFS assumes they are probably similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level 20 dB or more above that inducing mild TTS if the animal were exposed to the strong sound for an extended period, or to a strong sound with rather rapid rise time (Cavanaugh, 2000).

It is highly unlikely that marine mammals could receive sounds strong enough to cause permanent hearing impairment during a project employing two 45 in^3 (737 cm^3) GI guns. In the present project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, as they would probably need to be within a few meters of the GI guns for this to occur. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, even the levels immediately adjacent to the GI guns may not be sufficient to induce PTS, especially since a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside a GI gun for a period longer than the inter-pulse interval (6–10 s). Also, baleen whales generally avoid the immediate area around operating seismic vessels. Furthermore, the planned monitoring and mitigation measures, including visual monitoring, ramp ups, and shut downs of the GI guns when mammals are seen within the ''safety radii,'' will minimize the already-minimal probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects – Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no proof that any of these effects occur in marine mammals exposed to sound from airgun arrays (even large ones), but there have been no direct studies of the potential for airgun pulses to elicit any of those effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the present project where the GI guns are small, the ship's speed is relatively fast (7 knots (13 km/h)), and for the most part the survey lines are widely spaced with little or no overlap.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at that frequency, the ensuing resonance could cause damage to the animal. A workshop (Gentry [ed.], 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a short paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that might occur if they ascend unusually quickly when exposed to aversive sounds. Even if that can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds. It is especially unlikely in the case of this project involving only two small GI guns.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large arrays of airguns. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur auditory

impairment or other physical effects. Also, the required mitigation measures, including shut downs, will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Additional details may be found in Appendix A (g) of SIO's application.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality NOAA and USN, 2001; Jepson *et al.*, 2003), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In Sept. 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L-DEO vessel *Maurice Ewing* was operating a 20–gun 8490 in^3 (139,126 cm^3) array in the general area. The link between this stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. The present project will involve a much smaller sound source than used in typical seismic surveys. That, along with the required monitoring and mitigation measures, is expected to minimize any possibility for strandings and mortality.

Possible Effects of Bathymetric Sonar Signals

A multibeam bathymetric echosounder (Kongsberg Simrad EM–120, 12 kHz) will be operated from the source vessel during much of the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for 5–15 ms at up to 5 Hz, depending on water depth. As compared with the GI guns, the sound pulses emitted by this multibeam echosounder are at moderately high frequencies, centered at 12 kHz. The beam is narrow (1°) in fore-aft extent, and wide (150°) in the cross-track extent.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Kongsberg Simrad EM–120, (2) have a longer pulse duration, and (3) are directed close to horizontally, vs. downward, as for the multibeam echosounder. The area of possible influence of the Kongsberg Simrad EM–120 is much smaller--a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the EM–120 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses.

Masking

Marine mammal communications will not be masked appreciably by the multibeam echosounder signals given the low duty cycle of the system and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. However, all of those observations are of limited relevance to the present situation. Pulse durations from those sonars were much longer than those of the SIO multibeam echosounder, and a given mammal would have received many pulses from the naval sonars. During SIO's operations, the individual pulses will be very short, and a given mammal would not be likely to receive more than a few of the downward-directed pulses as the vessel passes by unless it were swimming in the same speed and direction as the ship in a fixed position underneath the ship.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 s pulsed sounds at frequencies similar to those that will be emitted by the multibeam echosounder used by SIO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from a bathymetric echosounder.

NMFS is not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the R/V *Roger Revelle*'s multibeam echosounder. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the multibeam sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals. NMFS (2001) concluded that momentary behavioral reactions ''do not rise to the level of taking.'' Thus, brief exposure of cetaceans or pinnipeds to small numbers of signals from the multibeam bathymetric echosounder system are not expected to result in a ''take'' by harassment.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the multibeam echosounder proposed for use by SIO is quite different than sonars used for navy operations. Pulse duration of the multibeam echosounder is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be exposed to the multibeam sound signal for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) Those factors would all reduce the sound energy received from the multibeam echosounder drastically

relative to that from the sonars used by the Navy.

Possible Effects of Sub-bottom Profiler Signals

A sub-bottom profiler will be operated from the source vessel much of the time during the planned study. Sounds from the sub-bottom profiler are short pulses of 1.5 - 24 ms duration. The triggering rate is controlled automatically so that only one pulse is in the water column at a time. Most of the energy in the sound pulses emitted by this sub-bottom profiler is at mid frequencies, centered at 3.5 kHz. The beamwidth is approx. 30o and is directed downward.

Sound levels have not been measured directly for the sub-bottom profiler used by the R/V *Roger Revelle*, but Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 microPa-m). The 160 and 180 dB re 1 microPa (rms) radii, in the horizontal direction, were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the R/V *Roger Revelle* has a stated maximum source level of 211 dB re 1 microPa-m and a normal source level of 200 dB re 1 microPa-m. Thus the received level would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, again assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30o beamwidth) and the measurements of Burgess and Lawson (2000).

Masking

Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most odontocetes, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the sub-bottom profiler are likely to be similar to those for other pulsed sources received at the same levels. Therefore, behavioral responses are not expected unless marine mammals are very close to the source, e.g., within approx. 160 m (525 ft) below the vessel, or about 17 m (54 ft) to the side of a vessel, and NMFS anticipates that these exposures at close range will be avoided through implementation of the required monitoring and mitigation measures.

Hearing Impairment and Other Physical Effects

Source levels of the sub-bottom profiler are much lower than those of the GI guns that are discussed above. Sound levels from a sub-bottom profiler similar to the one on the R/V *Roger Revelle* were estimated to decrease to 180 dB re 1 microPa (rms) (NMFS criteria for Level A harassment) at 8 m (26 ft) horizontally from the source, Burgess and Lawson 2000), and at approx. 18 m (59 ft) downward from the source. Because of the fact that the entire area to be ensonified by the sub-bottom profiler will be within the safety radius in which mitigation measures will be taken and because an animal would have to be directly beneath, close to, and traveling at the same speed and direction as the boat to be exposed to multiple pings above 180 dB, it is unlikely that the sub-bottom profiler will cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimated Take by Incidental Harassment for the Eastern Tropical Pacific Seismic Survey

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that would constitute Level B harassment, at most. The proposed mitigation measures are expected to minimize or eliminate the possibility of Level A harassment or mortality. It is difficult to make accurate, scientifically defensible, and observationally verifiable estimates of the number of individuals likely to be subject to low-level harassment by the noise from SIO's GI guns. There are many uncertainties in marine mammal distribution and seasonally varying abundance, and in local horizontal and vertical distribution; in marine mammal reactions to varying frequencies and levels of acoustic pulses; and in perceived sound levels at different horizontal and oblique ranges from the source. The best estimate of potential ''take by harassment'' is derived by converting the abundances of the affected species in Table 1 to per km abundances (even though most of the data used in this table were collected in different seasons than the SIO planned activity), and multiplying these abundances (for the appropriate region) by the area to be ensonified at levels greater than 160 dB (rms) (NMFS Level B harassment criteria). The area to be ensonified at levels greater than 160 dB is calculated using a 9–dB loss when converting from p-p to rms, and purely spherical spreading with no sea-surface baffling, which results in a swath width of 4.5 km (2.8 mi) ((2.3 km (1.4 mi) either side of the survey vessel). The total area ensonified is derived by multiplying this width by the numbers of hours profiling on each leg, and by the 13 km/hr (7 mi/hr) average speed of the R/V *Roger Revelle* during the sea floor profiling. The total estimated ''take by harassment'' is presented in Table 1. Thirteen species of odontocete whales, one species of mysticete whale, and no pinnipeds are expected to be harassed. No more than 0.72 percent of any stock is expected to be affected, and NMFS believes that this is a very small proportion of the ETP population of any of the affected species.

While data regarding distribution, seasonal abundance, and response of pinnipeds to seismic sonar is sparse, NMFS believes the R/V *Roger Revelle* is unlikely to encounter any of the four pinniped species that live, for at least part of the year, in SIO's proposed survey area because of the decreased likelihood of encountering them in the very deep water, the relatively small area proposed to be ensonified, and the likely effectiveness of the required mitigation measures in such a small area.

The SIO seismic survey in the ETP will involve towing a pair of GI guns that introduce pulsed sounds into the ocean, along with simultaneous operation of a multi-beam echosounder and sub-bottom profiler. A towed hydrophone streamer will be deployed to receive and record the returning signals. No ''taking'' by harassment, injury, or mortality of marine mammals

is expected in association with operations of the other sources discussed (bathymetric sonar or sub-bottom profiler), as produced sounds are beamed downward, the beam is narrow, and the pulses are extremely short.

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3–4 nm) and occasionally as far as 20–30 km (11–16 nm) from the source vessel when much larger airgun arrays have been used. Additionally, the numbers of mysticetes estimated to occur within the 160–dB isopleth in the survey area are expected to be low (4 or less, see Table 1). In addition, the estimated numbers presented in Table 1 are considered overestimates of actual numbers for two primary reasons. First, the estimated 160–radii used here are probably overestimates of the actual 160–radii at deep-water sites (Tolstoy *et al.*, 2004) such as the ETP survey area. Second, SIO plans to use smaller GI guns than those on which the radii are based.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins and some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the proposed mitigation measures, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of their population sizes in the ETP.

Larger numbers of delphinids may be affected by the seismic study, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes.

Mitigation measures such as controlled speed, course alteration, look outs, non-pursuit, ramp ups, and shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions and minimize any effects on hearing sensitivity. Effects on marine mammals are expected to be short-term, with no lasting biological consequences anticipated.

Potential Effects on Habitat

The proposed GI gun operations will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not appear to result in any appreciable fish kill. Various experimental studies showed that airgun discharges caused little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on hearing, may occur to somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002, 2003). Even so, any injurious effects on fish would be limited to short distances. Also, many of the fish that might otherwise be within the injury radius likely would be displaced from the region prior to the approach of the GI guns through avoidance reactions to the passing seismic vessel or to the GI gun sounds as received at distances beyond the injury radius.

Short, sharp sounds can cause overt or subtle changes in fish behavior. Chapman and Hawkins (1969) tested the reactions of whiting (hake) in the field to an airgun. When the airgun was fired, the fish dove from 25 to 55 m (80 to 180 ft) and formed a compact layer. By the end of an hour of exposure to the sound pulses, the fish had habituated; they rose in the water despite the continued presence of the sound pulses. However, they began to descend again when the airgun resumed firing after it had stopped. The whiting dove when received sound levels were higher than 178 dB re 1 microPa (peak pressure) (Pearson *et al.*, 1992).

Pearson *et al.* (1992) conducted a controlled experiment to determine effects of strong noise pulses on several species of rockfish off the California coast. They used an airgun with a source level of 223 dB re 1 microPa. They noted: startle responses at received levels of 200 205 dB re 1 microPa (peak pressure) and above for two sensitive species, but not for two other species exposed to levels up to 207 dB; alarm responses at 177 180 dB (peak) for the two sensitive species, and at 186 199 dB for other species; an overall threshold for the above behavioral response at approx. 180 dB (peak); an extrapolated threshold of approx. 161 dB (peak) for subtle changes in the behavior of rockfish; and a return to pre-exposure behaviors within the 20 60 min. after the exposure period.

In other airgun experiments, catch per unit effort of demersal fish declined when airgun pulses were emitted (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Skalski *et al.*, 1992). Reductions in the catch may have resulted from a change in behavior of the fish. The fish schools descended to near the bottom when the airgun was firing, and the fish may have changed their swimming and schooling behavior. Fish behavior returned to normal minutes after the sounds ceased. In the Barents Sea, abundance of cod and haddock measured acoustically was reduced by 44 percent within 9 km (5 nm) of an area where airguns operated (Engas *et al.*, 1993). Actual catches declined by 50 percent throughout the trial area and 70 percent within the shooting area. The reduction in catch decreased with increasing distance out to 30 33 km (16 18 nm), where catches were unchanged.

Other recent work concerning behavioral reactions of fish to seismic surveys, and concerning effects of seismic surveys on fishing success, is reviewed in Turnpenny and Nedwell (1994), Santulli *et al.*, (1999), Hirst and Rodhouse, (2000), Thomson *et al.*, (2001), Wardle *et al.*, (2001), and Engas and Lokkeborg, (2002).

In summary, fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 microPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the GI guns are likely to dive or exhibit some other kind of behavioral response. That might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior

once the seismic activity ceased. Thus, the survey would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching GI guns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the shock wave. They have an exoskeleton and no air sacs. Little or no mortality is expected. Many crustaceans can make sounds, and some crustaceans and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction probably would occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Furthermore, in the proposed project area, mysticetes are expected to be rare.

The effects of the planned activity on marine mammal habitats and food resources are expected to be negligible, as described previously. A small minority of the marine mammals that are present near the proposed activity may be temporarily displaced as much as a few kilometers by the planned activity.

This activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations, since operations at the various sites will be limited in duration.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the ETP near the survey area, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users.

Mitigation

For the seismic survey in the ETP during March – April 2006, SIO will deploy a pair of GI guns as an energy source, with a total discharge volume of 90 in^3. The energy from the GI guns will be directed mostly downward. The small size of the GI guns to be used during the proposed study is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with a large airgun arrays.

Received sound levels have been estimated by L-DEO in relation to distance from two 105 in^3 GI guns, but not two 45 in^3 (737 cm^3) GI guns. The radii around two 105 in^3 (1721 cm3) GI guns where received levels would be 180 and 190 dB re 1 microPa (rms) are small (54 and 17 m (155 ft and 45 ft), respectively), especially in the deep waters (>4,000 m (11,494 ft)) of the survey area. The 180 and 190 dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000).

Vessel-based observers will watch for marine mammals near the GI guns when they are in use. The number of individual animals expected to be approached closely during the activity will be small in relation to regional population sizes. With the required monitoring, ramp-up, and shut-down provisions (see later in this document), any effects on individuals are expected to be limited to behavioral disturbance.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daytime GI gun operations and during any nighttime start ups of the GI guns. The observations will provide the real-time data needed to implement some of the key mitigation measures. When marine mammals are observed within, or about to enter, designated safety zones (see below) where there is a possibility of significant effects on hearing or other physical effects, GI gun operations will be shut down immediately. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during all periods while operating airguns and two marine mammal observers (MMOs) will monitor for a minimum of 30 min prior to the planned start of GI gun operations after an extended shut down.

SIO proposes to conduct nighttime as well as daytime operations. Observers dedicated to marine mammal observations will not be on duty during ongoing seismic operations at night. At night, bridge personnel and other trained members of the scientific party will watch for marine mammals and will call for the GI guns to be shut down if marine mammals are observed in or about to enter the safety radii. If the GI guns are started up at night, two MMOs will monitor marine mammals near the source vessel for 30 min prior to start up of the GI guns using (aft-directed) ship's lights and night vision devices.

Safety Radii

The L-DEO model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 160, 180, and 190 dB re 1 microPa (rms) are predicted to be 510, 54, and 17 m (1466, 155, 49 ft), respectively. Because the model results are for the larger 105 in^3 (1721 cm^3) GI guns, those distances are overestimates of the distances for the 45 in^3 GI guns used in this study.

Empirical data concerning the 160-, and 180- dB distances have been acquired based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003, using the larger 105 in^3 GI guns (Tolstoy *et al.*, 2004). Although empirical data indicate that, for deep water (greater than 1000 m (greater than 3281 ft)), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004), the safety radii predicted by that model for 180– and 190–dB (54 m (177 ft) and 17 m (56 ft), respectively) are used here.

The GI guns will be shut down immediately when cetaceans or pinnipeds are detected within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) radius, respectively. The 180- and 190–dB shut-down criteria are consistent with guidelines listed for cetaceans and pinnipeds, respectively, by NMFS (2000) and other guidance by NMFS.

Operational Mitigation Measures

In addition to marine mammal monitoring, the following mitigation measures will be adopted during the proposed seismic program, provided that doing so will not compromise operational safety requirements. Although power-down procedures are often standard operating practice for seismic surveys, they will not be used here because powering down from two GI guns to one GI gun would make only a small difference in the 180- or 190–dB radius, probably not enough to allow continued one-gun operations if a mammal came within the safety radius for two guns. Mitigation measures that will be adopted are

-Speed or course alteration;

-Ramp-up and shut-down procedures;

-Specific start-up measures for night operations;

-Operation of GI guns only in water greater than 3,000 m (8,621 ft) deep.

Speed or Course Alteration – If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a

manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the animal does not approach within the safety radius. If the animal appears still likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shut down of the GI guns.

Shut-down Procedures – If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the GI guns will be shut down before the animal is within the safety radius. Likewise, if a marine mammal is already within the safety radius when first detected, the GI guns will be shut down immediately.

GI gun activity will not resume until the animal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked, and bottlenose whales).

Ramp-up Procedures – A modified ''ramp-up'' procedure will be followed when the GI guns begin operating after a period without GI gun operations. The two GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the two GI guns will be maintained.

Night Operations – At night, vessel lights and/or night vision devices (NVDs) will be used to monitor the safety radius for marine mammals while airguns are operating. Nighttime start up of the GI guns will only occur in situations when the entire safety radius is visible for the entire 30 minutes prior to start-up.

Monitoring

SIO will sponsor marine mammal monitoring during the present project, in order to implement the required mitigation measures that mandate real-time monitoring, and to satisfy the monitoring requirements of the IHA. SIO's Monitoring Plan is described here. This monitoring work has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions.

Vessel-based Visual Monitoring

Dedicated MMOs and other vessel-based personnel will watch for marine mammals near the seismic source vessel during all daytime and nighttime GI gun operations. GI gun operations will be immediately suspended when marine mammals are observed within, or about to enter, designated safety radii. At least one dedicated vessel-based MMO will watch for marine mammals near the seismic vessel during daylight periods with seismic operations, and two MMOs will watch for marine mammals for at least 30 minutes prior to start-up of GI gun operations. Observations of marine mammals will also be made and recorded during any daytime periods without GI gun operations. At night, the forward-looking bridge watch of the ship's crew will look for marine mammals that the vessel is approaching and execute avoidance maneuvers; the 180dB/190dB safety radii around the GI guns will be continuously monitored by an aft-looking member of the scientific party, who will call for shutdown of the guns if mammals are observed within the safety radii. Nighttime observers will be aided by (aft-directed) ship's lights and NVDs.

Observers will be on duty in shifts of no longer than four hours, and usually no longer than two hours in duration. Use of two simultaneous observers prior to ramp-up will increase the detectability of marine mammals present near the source vessel, and will allow simultaneous forward and rearward observations. Bridge personnel additional to the dedicated MMOs will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

Standard equipment for marine mammal observers will be 7 X 50 reticle binoculars and optical range finders. At night, NVD equipment will be available. The observers will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or GI gun power shut-down.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions. It will also provide the information needed in order to shut down the GI guns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and GI gun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer when observers are off duty. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered, and by subsequent manual checking of the database. Those procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (GI gun shut down);

2. Information needed to estimate the number of marine mammals potentially taken by harassment

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A report will be submitted to NMFS within 90 days after the end of this ETP research cruise, which is predicted to occur around 01 April, 2006. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the

number of animals affected and the nature of the impacts.

ESA

Under section 7 of the ESA, NSF and the NMFS, Office of Protected Resources (OPR), Division of Permits, Conservation, and Education have consulted with the NMFS, OPR, Endangered Species Division regarding take of ESA-listed species during this activity and as a result of the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. In a Biological Opinion (BO), NMFS concluded that the 2006 SIO seismic survey in the ETP and the issuance of the associated IHA are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify any designated critical habitat. NMFS has issued an incidental take statement (ITS) for sperm whales, blue whales, green sea turtles, leatherback turtles, and olive ridley sea turtles, which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. The terms and conditions of the BO have been incorporated into the SIO IHA.

National Environmental Policy Act (NEPA)

In 2003, NSF prepared an Environmental Assessment (EA) for a marine seismic survey by the R/V *Maurice Ewing* in the Hess Deep Area of the ETP. This EA addressed the potential effects of a larger airgun array (10 airguns, total volume 3005 in3 (49,243 cm3)) being operated in the same part of the ocean as is proposed for the R/V *Roger Revelle* in this application. In a Supplemental EA, NMFS reanalyzed the impacts addressed in NSF's 2003 EA as they relate to the issuance of an IHA to SIO in 2006 for their seismic survey of the ETP, and, subsequently, issued a Finding of No Significant Impact (FONSI) on the supplemental EA. Therefore, preparation of an Environmental Impact Statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the Supplemental EA and FONSI are available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the impact of SIO's conducting the seismic survey in the ETP may result, at worst, in a temporary modification in behavior (Level B Harassment) by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks of marine mammals.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that marine mammals would have to be closer than 54 m (177 ft) from the vessel to be exposed to levels of sound (180 dB or 190 dB for cetaceans and pinnipeds, respectively) believed to have even a minimal chance of causing TTS, and (3) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

NMFS has determined that small numbers of 13 species of cetaceans may be taken by Level B harassment. While the number of incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the estimated number of potential harassment takings is not expected to be greater than 1.29 percent of the population of any of the stocks affected (see Table 1). In addition, the SIO seismic program will not interfere with any legal subsistence hunts, since seismic operations will not be conducted in the same space and time as the hunts in subsistence whaling and sealing areas and will not adversely affect marine mammals used for subsistence purposes has issued an IHA to SIO for conducting a low-intensity oceanographic seismic survey in the ETP, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has determined that the proposed SIO activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Authorization

NMFS has issued a 1–year IHA to SIO for the take, by harassment, of small numbers of marine mammals incidental to conducting a low-intensity oceanographic seismic survey in the ETP.

Dated: March 9, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–2884 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022706B]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1–year letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force, to harass seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California.

DATES: Effective March 17, 2006, through March 16, 2007.

ADDRESSES: The LOA and supporting documentation are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) to

allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of harbor seals, northern elephant seals, California sea lions, and northern fur seals, by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 06, 2004 (69 FR 5720), and remain in effect until February 06, 2009. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during rocket launches at VAFB.

Summary of Request

NMFS received a request for an LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed one year, take of marine mammals, by harassment, incidental to rocket launches at VAFB.

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2005 LOA, VAFB submitted an annual report on the rocket launches at VAFB. A summary of that report (SRS Technologies, 2006) follows.

A total of eight launches were conducted at VAFB between January 1, 2005, and December 31, 2006. The dates, locations, and monitoring required for the launches are summarized in Table 1.

TABLE 1. SUMMARY OF LAUNCHES THAT OCCURRED AT VAFB IN 2005

Vehicle	Date	Time	Launch Site	Monitoring Conducted
Minotaur XSS-11	11-Apr	6:35	SLC-8	South VAFB.
Delta II NOAA-N	20-May	3:22	SLC-2	North VAFB and San Miguel Island.
Minuteman III	21-Jul	1:01	NVAFB	No.
Minuteman III	25-Aug	1:01	NVAFB	No.
Minuteman III	7-Sep	1:01	NVAFB	No.
Minuteman III	14-Sep	1:01	NVAFB	No.
Minotaur STP-R1	22-Sep	19:24	SLC-8	No.
Titan IV B-26	19-Oct	11:05	SLC-4E	San Miguel Island.

For all four Minuteman III and the one Minotaur STP, launches occurred outside of the harbor seal pupping season and a sonic boom of greater than 1 lbs/ft2 (psf) was not predicted to occur at San Miguel Island (SMI) as a result of the launch, so biological monitoring was not required or conducted. With the exception of the Delta II, acoustic measurements of all of the vehicles launched in 2005 had previously been taken, and were not required or conducted again.

Though no sonic boom greater than 1 psf was predicted at SMI, the Minotaur XSS–11 was launched during the harbor seal pupping season, and therefore monitoring was required at VAFB. Monitoring was conducted between the Harbor Seal Beach and Flat Iron Rock haul-out sites on South VAFB. Though it was too foggy to see the behavior of the seals present at the moment the rocket was launched, the same number of adult seals and pups were present at the site 3.5 hours after the launch as were present the day prior to the launch, and numbers increased the next day, and were higher again 2 weeks later. In the days immediately surrounding the launch, a maximum of 25 adult seals and 16 pups were observed.

The Delta II NOAA-N was launched during harbor seal pupping season and a sonic boom greater than 1 psf was predicted to reach SMI, so monitoring was required at SMI and VAFB. On North VAFB, at the Spur Road haul-out site, harbor seal numbers increased the day after the launch and were higher again two weeks later. In the days immediately surrounding the launch, a maximum of 52 adult seals were observed. In the Adam's Cove area of Point Bennett on the western end of SMI, two smaller focal groups of California sea lions composed primarily of adult females were observed. The observer did not hear a sonic boom and saw no visible reaction to the launch by the sea lions (with night vision goggles). In the days immediately surrounding the launch, a maximum of 625 adult sea lions were observed. Similarly, no reaction by elephant seals to the launch was observed at Point Bennett, and the maximum number seen was 256.

A sonic boom greater than 1 psf was predicted to occur at SMI during the Titan IV B–26 launch, however, it occurred outside of the harbor seal pupping season, so no monitoring was required at VAFB. A smaller focal group of California sea lions was monitored at the North-West Cove area of Point Bennett on SMI. The observer did not hear a sonic boom (and acoustic measurements indicated no sonic boom impacted SMI) and saw no visible reaction to the launch by the sea lions. A maximum of 3,157 sea lions (mostly juveniles) were seen in the days surrounding the launch.

In summary, no impacts to any marine mammals on SMI were detected during the launches. On VAFB, there was no evidence of injury or mortality as a result of the launches and numbers of hauled out animals were back to pre-launch levels within one day of both launches monitored.

Authorization

Accordingly, NMFS has issued an LOA to the 30th Space Wing, U.S. Air Force authorizing the harassment of

marine mammals incidental to rocket launches at VAFB. Issuance of this LOA is based on findings, described in the preamble to the final rule (67 FR 5720, February 6, 2004) and supported by information contained in VAFB's required 2005 annual report, that the activities described under this LOA will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

Dated: March 20, 2006.

James H. Lecky,

Director, Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4321 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Vol. 70, No. 158, pages 48374–48375, on August 17, 2005.

Bruce Borzino (C), Deputy Director, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/2008, General.

Alan Cookson (C) (Alternate), Deputy Director, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Paul Doremus (C), Director of Strategic Planning, Program Planning and Integration, National Oceanic and Atmospheric Administration,Silver Spring, MD 20910, Appointment Expires: 12/31/07, Limited.

Cita Furlani (C), Chief Information Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Patrick Gallagher (C) (Alternate), Director, NIST Center for Neutron Research, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Howard Harary (C), Deputy Director, Manufacturing Engineering Laboratory,National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/07, Limited.

Patricia Sefcik (C), Senior Director to the Deputy Assistant Secretary for Manufacturing, Manufacturing and Services, International Trade Administration,Washington, DC 20230, Appointment Expires: 12/31/07, General.

Hratch Semerjian (C), Deputy Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/2008, General.

Dated: March 20, 2006.

William Jeffrey,

Director, National Institute of Standards and Technology, Technology Administration, Department of Commerce.

[FR Doc. E6–4225 Filed 3–23–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Department Advisory Committee on Women in the Services (DACO WITS); Cancellation of Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of the cancellation of the Defense Department Advisory Committee on Women in the Services business meeting, March 27, 2006, 8:30 a.m to March 29, 2006, 5 p.m., Embassy Suites Hotel Crystal City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on March 14, 2006, 71 FR 13108–13109. The meeting was cancelled due to a lack of quorum.

Dated: March 20, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–2855 Filed 3–23–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, HQ USAF Scientific Advisory Board.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present the findings/results of the FY 2006 Technology Options for Improved Air Vehicle Fuel Efficiency quick look study to the assembled SAB. Because contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 10, 2006.

ADDRESSES: 221 N. Rampart Boulevard, Las Vegas, NV 89145.

FOR FURTHER INFORMATION CONTACT: Lt Col Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–4263 Filed 3–23–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, HQ USAF Scientific Advisory Board.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming briefing of the findings/results of the FY 2006 Science and Technology Quality Review of Air Force Research Laboratory. The purpose of the meeting is to brief Air Force leadership on the completeness and balance of Air Force Science and Technology programs. Because contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 30 March 2006.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION: Lt. Col. Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force

Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Boa-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–4264 Filed 3–23–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method of Producing an Article of Footwear With Temperature Regulation Means

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,0011,781 B2 entitled ''Method of Producing an Article of Footwear with Temperature Regulation Means'' issued March 14, 2006. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Boucher at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–5431 or E-mail: *Arnold.Boucher@natick.army.mil*.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–2860 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement 2.0 for the Lower Mud River Watershed Project, Milton, Cabell County, WV

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Huntington District will prepare a Supplemental Environmental Impact Statement (SEIS). The SEIS will evaluate potential impacts to the natural, physical, and human environment as a result of utilizing soil borrow material for construction of the selected plan for the proposed flood damage reduction measures for the area at the City of Milton, Cabell County, WV (lower Mud River Project). The Corps is soliciting public concerns/issues to be evaluated during the study process.

ADDRESSES: Send written comments and suggestions concerning this proposed project to S. Michael Worley PM–PD, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV, 25701–2070. Telephone: (304) 529–5712. Electronic mail: *Stephen.M.Worley@Lrh01.usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy K. Frantz PD–F, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV, 25701–2070. Telephone: (304) 399–5845. Electronic mail: *amy.k.frantz@Lrh01.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Authority

The proposed project is authorized under Section 580 of the Water Resources Development Act (WRDA) of 1996, which provides the Corps authority ''. . . to conduct a limited reevaluation of the watershed plan and environmental impact statement prepare for the Lower Mud River, Milton, W.V., by the Natural Resources Conservation Service, pursuant to the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.) and may carry out the project'', and Section 340 of the WRDA of 2000, which reads: ''Modifies Lower Mud River project at Milton authority (Sec 580 of WRDA of 1996) to direct the COE to construct the project as selected in the COE reevaluation report.''

2. Background

Under authority of the Watershed Protection and Flood Prevention Act (Pub. L. 83–566), the Natural Resources Conservation Service (NRCS) began an investigation of land and water resource problems, including flooding, in the Lower Mud River watershed in 1972. This early investigation culminated with completion of the Lower Mud River Watershed Plan and Environmental Impact Statement (EIS) in May 1993, in which a channel modification project on the Mud River in the vicinity of Milton was recommended. Section 580 of WRDA 1996 provided the Corps authority to re-evaluate that study and construct a project.

In May 2004 the Corps completed the re-evaluation study and recommended Plan B. The Plan consists of a flood control levee with modifications to the Mud River. Plan B provides a high level of flood protection, has the greatest net benefits, and all significant environmental impacts are mitigated by special project features.

Further geotechnical studies after the completion of the re-evaluation study and EIS indicate that the proper quantity and quality of borrow material cannot be obtained within the Construction Work Limits identified in the EIS. This Supplemental EIS will evaluate several borrow site alternatives in the surrounding area for the purpose of obtaining the proper quantity and quality of soil material for construction of the recommended plan. The Supplemental EIS will evaluate transportation, noise, terrestrial, aquatic, economic, environmental justice and cultural resource issues associated with the selection of borrow sites.

3. Public Participation

The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Lower Mud River flooding problems as they affect the community of Milton, WV and the environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) Public meetings to be held near the community of Milton; (2) Anytime during the NEPA process via mail, telephone or e-mail; (3) During Review and Comment on the Draft SEIS—approximately August 2006; and, (4) Review of the Final EIS—Fall 2006. Schedules and locations will be announced in local news media. Interested parties should submit contact information to be included on the mailing list for public distribution of meeting announcements and documents (See **ADDRESSES**).

William E. Bulen,

COL, Corps of Engineers, Commander.

[FR Doc. 06–2862 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Scoping Meeting and Preparation of Draft Environmental Impact Statement for Widening and Deepening of the Matagorda Ship Channel in Calhoun County and Matagorda County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District intends to prepare a Draft Environmental Statement (DEIS) to assess the social, economic and environmental effects of the proposed widening and deepening of the Matagorda Ship Channel. The DEIS will assess potential impacts of a range of alternatives, including the No Action and preferred alternatives. The Federal action is consideration of a Department of Army Permit application for work under section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), section 404 of the clean Water Act (33 U.S.C. 1344), and section 102 of the Marine Protection Research and Sanctuary Act (33 U.S.C. 1412).

DATES: A public scoping meeting will be held on April 25, 2006, at 6 p.m.

ADDRESSES: The meeting will be held at the Bauer Community Center, 2300 N. Hwy. 35, Port Lavaca, TX 77979

FOR FURTHER INFORMATION CONTACT: Ms. Denise Sloan, Project Manager, by letter at U.S. Army Corps of Engineers, PO Box 1229, Galveston, Texas 77553, by telephone at (409) 766–3962, or by e-mail at *denise.l.sloan@SWG02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare a DEIS on the proposed channel widening and deepening of the Matagorda Ship Channel, which extends approximately 27 miles from the Port of Port Lavaca-Port Comfort turning basin in Lavaca Bay through Matagorda Bay and offshore into the Gulf of Mexico. The Calhoun County Navigation District proposes this project.

1. Description of the Proposed Project: The Calhoun County Navigation District is proposing to widen and deepen the Matagorda Ship Channel as follows:

a. From Channel Station 118+502 to Channel Station 116+223, the Point Comfort turning basins will be deepened an additional 8 feet, to −44 feet Mean Low Tide (MLT);

b. Adjacent to the existing turning basins, a new turning basin and marine slip will be dredged to a depth of −44 feet MLT;

c. From Channel Station 116+223 to Channel Station 3+700 at the Matagorda Peninsula, the channel will be widened an additional 200 feet and deepened an additional 8 feet, to −44 feet MLT;

d. From Channel Station 3+700 to Channel Station −23+000 of the Outer Bar Channel, the channel will be widened an addtional 300 feet and deepened an additional 8 feet, to −46 feet MLT;

e. Approximately 48.9 million cubic yards of new work dredged material will be generated from the widening and deepening project; and

f. Approximately 316 million cubic yards of maintenance dredged material will be generated from the widened and deepened project during the 50-year planning period.

2. *Scoping and Public Involvement Process:* A scoping meeting to gather information on the subjects to be studied in detail in the DEIS will be conducted on (see **DATES**). An informal open house, allowing for review of the proposed project and questions and answers, will be conducted between 5 and 6 p.m., prior to the scoping meeting.

3. *Significant Issues:* Issues associated with the proposed project to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, dredged material placement, the beneficial uses of dredged material, water quality, fish and wildlife values including threatened and endangered species; air quality; environmental justice; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; energy supply and natural resources; hazardous waste and materials; aesthetics; public health and safety; navigation; shoreline erosion and accretion; cumulative impacts, and the needs and welfare of the people.

4. *Technical Review and Consultation:* Several State and Federal Agencies will be invited to provide technical review of the DEIS. Those agencies include: the Environmental Protection Agency, the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Coast Guard, the Texas Commission on Environmental Quality, the Texas General Land Office, the Texas Parks and Wildlife Department and the Texas Department of Transportation.

5. *Additional Review and Consultation:* Additional review and consultation that will be incorporated into the preparation of this DEIS will include: Compliance with the Texas Coastal Management Program; protection of cultural resources under Section 106 of the National Historic Preservation Act; protection of navigation under the Rivers and Harbors Act of 1899; protection of water quality under section 401 of the Clean Water Act; protection of air quality under the Clean Air Act; and protection of endangered and threatened species under section 7 of the Endangered Species Act.

6. *Availability of the DEIS:* The Draft Environmental Impact Statement is projected to be available in August 2006. At this time the Galveston District plans to conduct a Public Hearing following the release of the DEIS.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–2861 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Chesapeake Bay Oyster Recovery Project, Virginia and Maryland

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Baltimore (NAB) issued a notice of intent (NOI) for the Chesapeake Bay Native Oyster Recovery Project in the Friday, November 26, 2004 issue of the **Federal Register** (69 FR 68887). That NOI indicated that NAB would prepare a draft environmental impact statement (DEIS) for native oyster (*Crassostrea virginica*) recovery activities within Maryland waters of the Chesapeake Bay.

The Corps is announcing a major change in the scope of the project. The NAB and Norfolk (NAO) Districts will prepare a single, integrated master plan (MP) and programmatic environmental impact statement (PEIS) for native oyster recovery in the entire Chesapeake Bay. This MP is a long-term plan for native oyster recovery and will be written in cooperation with the local sponsors, the Maryland Department of Natural Resources and Virginia Marine Resources Commission. The Corps is undertaking native oyster recovery in the Chesapeake Bay to support efforts to reverse the ongoing decline in oyster resources throughout the Bay.

FOR FURTHER INFORMATION CONTACT: Questions and comments about the MP and/or PEIS can be addressed to Mr.

Craig Seltzer, Norfolk District, U.S. Army Corps of Engineers, ATTN: CENAO–PM–PA, 803 Front Street, Norfolk, VA 23510. E-mail address: *Craig.L.Seltzer@usace.army.mil* or Ms. Erika Mark, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O, Box 1715, Baltimore, MD 21203. E-mail address: *Erika.L.Mark@usace.army.mil.* Please include your name and address in your message.

SUPPLEMENTARY INFORMATION: The MP/EIS will incorporate science, policy, and experience from a number of sources to develop a comprehensive approach to oyster restoration in Maryland and Virginia. The purpose of the MP is to lay out a road map for a long-term, large-scale restoration of native oysters in the Maryland and Virginia waters of the Chesapeake Bay. All suitable locations and techniques available for native oyster restoration will be identified and explored, and, if restoration is feasible, will be included in the MP.

Previously performed oyster restoration activities by NAB include the: Creation of new oyster bars and rehabilitation of existing non-productive bars; construction of see bars for production and collection of seed oysters or ''spat''; planting of hatchery-produced and seed bar spat on new and rehabilitated bars; and monitoring of implemented projects. Previously performed oyster restoration activities by NAO include: Construction of permanent oyster reef sanctuaries; seeding of reefs with disease resistant DEBY™ strain oysters; adaptive management and monitoring; and managed spat-on-shell production areas with oysters moved to other sites in the Bay as part of a genetic rehabilitation stocking effort. This work is being conducted under the authority provided by Section 704(b) of the Water Resources Development Act (WRDA) of 1986, as amended.

Scoping: The Corps will conduct a public scoping meeting in Virginia this spring to supplement the scoping meetings previously held in Maryland, and will include interested parties throughout the development of the EIS through informational meetings and website postings and other means. All interested federal, state, and local agencies, interested private and public organizations, affected Indian tribes, and individuals are invited to attend the scoping meeting.

Other Environmental Review and Consultation Requirements: To the fullest extent possible, the EIS will be integrated with analyses and consultation required by the Fish and Wildlife Coordination Act of 1958, as amended; the National Historic Preservation Act of 1966, as amended; the Coastal Zone Management Act of 1972, as amended; the Endangered Species Act of 1973, as amended; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the Clean Water Act of 1977, as amended.

Schedule: The anticipated date of publication of the draft PEIS is March 2007. The PEIS will be prepared in accordance with (1) the National Environmental Policy Act (NEPA) of 1969, 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), and (3) USACE regulations implementing NEPA (ER–200–2).

Claire O'Neill,

Project Manager.

[FR Doc. 06–2863 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: April 26, 2006.

Place: Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, GA 30337.

Time: 8:30 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel James R. Rowan, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 29180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: An Executive session of the Board will meet to discuss action items from past meetings and ongoing initiatives.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–2859 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–012]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver, granting of application for interim waiver, and request for comments.

SUMMARY: Today's notice publishes a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS). This Petition for Waiver (hereafter ''MEUS Petition'') requests a waiver of the test procedures applicable to residential and commercial package air conditioners and heat pumps. The Department of Energy (hereafter ''Department'' or ''DOE'') is soliciting comments, data, and information with respect to the MEUS Petition. Furthermore, today's notice includes an alternate test procedure the Department is considering to include in the Decision and Order and for which it is requesting comments.

Today's notice also grants an Interim Waiver to MEUS from the existing Department test procedures applicable to residential and commercial package air conditioners and heat pumps.

DATES: The Department will accept comments, data, and information regarding this Petition for Waiver until, but no later than April 24, 2006.

ADDRESSES: Please submit comments, identified by case number [CAC–012], by any of the following methods:

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

• *E-mail: Michael.Raymond@ee.doe.gov*. Include either the case number [CAC–012], and/or ''MEUS Petition'' in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. The Department does not accept telefacsimiles (faxes). Any person submitting written comments must also send a copy of such comments to the petitioner. (10 CFR 430.27(b)(1)(iv), 431.201(d)(2)) [1] The name and address of the petitioner of today's notice is: William Rau, Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. The Department will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to read the background documents relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: this notice; public comments received; the Petition for Waiver and Application for Interim Waiver; prior Department rulemakings regarding commercial central air conditioners and heat pumps; and the prior MEUS Petition for Waiver, the Department's notice of the prior MEUS Petition for Waiver and the subsequent Department Decision and Order. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; e-mail: *Michael.Raymond.ee.doe.gov;* or

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority
II. Petition for Waiver
III. Application for Interim Waiver
IV. Alternate Test Procedure
V. Summary and Request for Comments

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part C of Title III (42 U.S.C. 6311–6317) provides for an energy efficiency program entitled ''Certain Industrial Equipment,'' which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves residential products under Part B, and commercial equipment under Part C. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3), 6314(a)(2)).

MEUS's petition requests a waiver from both the residential and commercial test procedures for its R410A models of its CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) product line, which are sold for commercial use. The test procedures for residential products appear at 10 CFR part 430, subpart B, Appendix M. EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use or estimated annual operating costs, and are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A), and 42 U.S.C. 6293(b)(3)).

For commercial package air conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B)). On October 21, 2004, the Department published a direct final rule adopting test procedures for commercial package air conditioning and heating equipment, effective December 20, 2004. DOE adopted ARI Standard 210/240–2003 for small commercial package air conditioning and heating equipment with capacities <65,000 Btu/h and ARI Standard 340/360–2000 for large commercial package air conditioning and heating equipment with capacities ≥ 135,000 Btu/h and <240,000 Btu/h and small commercial package air conditioning and heating equipment

[1] On October 18, 2005, DOE published a technical amendment which re-designates Subpart L (sections 431.201 through 431.207) of the Code of Federal Regulations (CFR) as Subpart V (sections 431.401 through 431.407). (70 FR 60407, October 18, 2005) DOE published the technical amendment to place in the CFR the energy conservation standards and related definitions that Congress prescribed in the Energy Policy Act of 2005 for certain consumer products and commercial and industrial equipment. The amendment does not change the test procedure waiver provisions for commercial equipment, but moves them from 10 CFR 431.201 to 431.401. The residential test procedure waiver provisions remain at 10 CFR 430.27.

with capacities ≥65,000 Btu/h and <135,000 Btu/h. (69 FR 61962, October 21, 2004) The capacities of MEUS's MULTI CITY VRFZ products sold for commercial use fall in the ranges covered by both the commercial standards, ARI Standard 340/360–2000 and the ARI Standard 210/240–2003, and the test procedures for residential products cited above.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401 (formerly, 10 CFR 431.201).

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (hereafter ''Assistant Secretary'') to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(1), 10 CFR 431.201(a)(1)) The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. Petitioners are to include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. (10 CFR 430.27(b)(1)(iii), 10 CFR 431.201(b)(1)(iii)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

The waiver process also allows the Assistant Secretary to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2), 10 CFR 431.201(a)(2)) An Interim Waiver remains in effect for a period of 180 days or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. (10 CFR 430.27(h), 10 CFR 431.201(e)(4)).

II. Petition for Waiver

On November 7, 2005, MEUS filed an Application for Interim Waiver and a Petition for Waiver from the test procedures applicable to its residential and commercial package air conditioning and heating equipment. In particular, MEUS requested a waiver from the residential test procedures contained in 10 CFR part 430, subpart B, Appendix M, and a waiver from the commercial test procedures contained in ARI Standard 210/240–2003 and in ARI Standard 340/360–2000. The Department previously granted MEUS a waiver from test procedures in 2004 for similar models which use R22 as a refrigerant. (69 FR 52660, August 27, 2004) Given product adjustments to accommodate the new R410A refrigerant, MEUS requests a waiver from the test procedures for its new MULTI CITY models.

MEUS seeks a waiver from the applicable test procedures because, MEUS asserts, design characteristics of the R410A CITY MULTI VRFZ systems prevent testing according to the currently prescribed test procedures. MEUS claims that its R410A models cannot be tested pursuant to the existing test procedures for the same reasons that its R22 models were previously granted a waiver by the Department. In particular, the R410A CITY MULTI systems can connect more indoor units than the test laboratories can physically test at one time. Because of the inability to test products with so many indoor units, testing laboratories will not be able to test many of the R410A system combinations. Furthermore, MEUS asserts that the current test procedures do not provide direction for determining what combinations of outdoor and indoor units should be tested in the circumstance where a multitude of different combinations are possible. Also, the test procedures provide no mechanism for sampling component combinations. In addition, MEUS asserts that it is not practical to test all of the potentially available combinations of indoor and outdoor units, which numbers in the billions.

MEUS states that the R410A CITY MULTI system is designed to be flexible, with numerous combinations possible. According to MEUS, each of the indoor units is designed to be used with up to 18 other indoor units with the 108,000 Btu/h outdoor units and potentially 31 other indoor units with the 234,000 Btu/h outdoor units. Also, MEUS offers 58 different indoor models that can be used in the different combinations. Given the above, MEUS asserts the current test procedures cannot practically be applied to the CITY MULI VRFZ systems.

In addition, MEUS asserts, the current test procedures evaluate CITY MULTI VRFZ system products in a manner not representative of their true energy efficiency. MEUS claims that many benefits of its system characteristics, including variable refrigerant control and distribution, zoning diversity, part-load operation and simultaneous heating and cooling, are not credited under the current test procedures.

The MEUS petition requests that the Department grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. MEUS did not include an alternate test procedure in its petition and noted that it knows of no alternative test procedure that could evaluate its products in a representative manner. However, MEUS is actively working with ARI to develop test procedures that accurately reflects the operation and energy consumption of these types of units.

III. Application for Interim Waiver

MEUS also requested an Interim Waiver to allow it to introduce its new R410A products in the U.S. market while the Department evaluates the Petition for Waiver. An Interim Waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. (10 CFR 431.201(e)(3), 430.27(g)).

MEUS's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic hardship MEU will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. For MEUS's new R410A CITY MULTI VRFZ products, it appears likely that the Petition for Waiver will be granted. The products currently under consideration, MEUS's new R410A CITY MULTI VRFZ products, are quite similar to the MEUS products previously granted a waiver, MEUS's R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004) The previous MEUS waiver was granted because MEUS's R22 products cannot be tested according to the prescribed test procedures, for two reasons: (1) Test laboratories cannot test

products with so many indoor units (at the time of the ruling, R22 CITY MULTI VRFZ outdoor systems could connect an outdoor unit with up to sixteen indoor units); and (2) there are too many possible combinations of indoor and outdoor units (at the time of the ruling, MEUS offered 58 R22 indoor unit models, allowing for well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations. As discussed above, the new MEUS CITY MULTI VRFZ systems will likely suffer the same testing problems that prompted the Department to grant MEUS the waiver for its R22 products. Thus, it is likely that MEUS's Petition for Waiver will be granted for the new R410A models.

Therefore, MEUS's Application for an Interim Waiver from the Department test procedure for its new R410A CITY MULTI VRFZ systems is granted. Hence, it is ordered that:

The Application for Interim Waiver filed by MEUS is hereby granted for MEUS's new R410A CITY MULTI VRFZ central air conditioners and central air conditioning heat pumps. MEUS shall not be required to test or rate its CITY MULTI VRFZ products listed below on the basis of the currently applicable test procedures, which are the test procedures contained in 10 CFR part 430, subpart B, Appendix M, for the PUMY–P48TGMU–* model, listed last, and ARI 340/360–2000 and ARI 210/240–2003, for the other listed models:

CITY MULTI Variable Refrigerant Flow Zoning System R–2 Series Outdoor Equipment:[2]

- PURY–P72TGMU–*, 72,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P96TGMU–*, 96,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P108TGMU–*, 108,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P126TGMU–*, 126,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P144TGMU–*, 144,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P168TGMU–*, 168,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P192TGMU–*, 192,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P204TGMU–*, 204,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P216TGMU–*, 216,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–P234TGMU–*, 234,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y-Series Outdoor Equipment:

- PUHY–P72TGMU–*, 72,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P96TGMU–*, 96,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P108TGMU–*, 108,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P126TGMU–*, 126,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P144TGMU–*, 144,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P168TGMU–*, 168,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P192TGMU–*, 192,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
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- PUHY–P216TGMU–*, 216,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–P234TGMU–*, 234,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230–1–60 split-system variable-capacity air conditioner or heat pump.

- PCFY Series—Ceiling Suspended—PCFY–P12/18/24/30/36***–*
- PDFY Series—Ceiling Concealed Ducted—PDFY–P06/08/12/15/18/24/30/36/48***–*
- PEFY Series—Ceiling Concealed Ducted (Low Profile)—PEFY–P06/08/12***–*
- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)–PEFY–P15/18/24/27/30/36/48/54/72/96***–*
- PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—PEFY–P30/54/72/96***–*–*
- PFFY Series—Floor Standing (Concealed)—PEFY–P06/08/12/15/18/24***–*
- PFFY Series—Floor Standing (Exposed)—PEFY–P06/08/12/15/18/24***–*
- PKFY Series—Wall-Mounted—PKFY–P06/08/12/18/24/30***–*
- PLFY Series—4-Way Airflow Ceiling Cassette—PEFY–P12/18/24/30/36***–*
- PMFY Series—1-Way Airflow Ceiling Cassette—PEFY–P06/08/12/15***–*

CITY MULTI Variable Refrigerant Flow Zoning System S-Series Outdoor Equipment:

- PUMY—P48TGMU–*, 48,000 Btu/h, 208/230–1–60 split-system variable-speed heat pump.[3]

This Interim Waiver is based upon the presumed validity of statements and allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect. The Interim Waiver shall remain in effect for a period of 180 days or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

IV. Alternate Test Procedure

Manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6314(d), 42 U.S.C. 6293(c)). Consistent representations are important for manufacturers to make claims about the energy efficiency of their products. For example, they are necessary to determine compliance with state and local energy codes and regulatory requirements, and can provide valuable consumer purchasing information. To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products (69 FR 52660, August 27, 2004).

As noted above, existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combination of

[2] The * denotes engineering differences in the models.

[3] Though Mitsubishi sells the PUMY–P48TGMU–* model as a commercial product, it is tested according to the residential test procedures prescribed by DOE, at 10 CFR part 430, subpart B, Appendix M.

indoor and outdoor units for some variable refrigerant zoning systems is impractical to test. Subsequent to the waiver that DOE granted for MEUS's R22 models, ARI developed a committee to discuss the issue and work on developing an appropriate test protocol for variable refrigerant zoning systems. However, to date, no additional test methodologies have been adopted by the committee or put forth to the Department. Furthermore, the Department is aware that the time required for drafting and approving such standards may be months or even years.

DOE is considering amending the waiver issued to MEUS on August 27, 2004. DOE has been aware that MEUS has made efficiency representations for its City Multi products on its Web site for several years. The efficiency representations are currently listed under the headings ''System Efficiency'' for cooling, and ''System COP'' for heating. DOE is considering prohibiting the making of efficiency representations for the products granted a waiver on August 27, 2004, because these products were granted a waiver for the reason that the products could not be tested, which implies that representations cannot be made on the basis of testing.

DOE is considering what energy efficiency representations it will allow for these products. If DOE grants this waiver, MEUS could sell products with energy efficiency representations under one of three methods outlined in (3)(B) below. An alternate test procedure is needed in order that manufacturers can make representations for their products. Even though MEUS did not include an alternate test procedure in their petition, and DOE did not specify one in the previous MEUS waiver, DOE is considering including in the Decision and Order the following waiver language:

(1) The '''Petition for Waiver''' filed by Mitsubishi Electric and Electronics USA, Inc. (MEUS) is hereby granted as set forth in the paragraphs below.

(2) MEUS shall be not be required to test or rate the CITY MULTI Variable Refrigerant Flow Zoning System (VRFZ) products covered in this waiver on the basis of the currently applicable test procedure, but shall be required to test and rate its CITY MULTI VRFZ products covered in this waiver according to the alternate test procedure as set forth in paragraph (3).

(3) Alternate test procedure. MEUS shall be required to test according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR parts 430 and 431, except for the first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the highest volume of retail sales.'' Instead of testing the combinations likely to have the highest volume of retail sales, which may be difficult to identify, MEUS may test a ''tested combination'' selected in accordance with the provisions of subparagraph (A) of this section. MEUS may make representations of the MULTI CITY products covered in this waiver, according to the provisions of subparagraph (B).

(A) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system (''VRF system'') used as a tested combination shall consist of an outdoor unit that is matched with between 2 and 5 indoor units.

(ii) The indoor units shall—

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95% and 105% of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50% of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(B) Representations. MEUS may make representations about the Energy Efficiency Rating (''EER'') or Coefficient of Performance (''COP'') of products covered by this test procedure waiver only to the extent that such representations are made consistent with the provisions outlined below:

(i) If MEUS chooses to test retail combinations of its MULTI CITY VRFZ products, MEUS may make representations about these retail combinations according to those test procedures for central air conditioners and heat pumps prescribed at 10 CFR parts 430 and 431.

(ii) In the case where MEUS does not test retail combinations, MEUS may make representations which are based on the testing results from the tested combination and which are consistent with any of the three following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE and described in 10 CFR 430.24(m).

(b) Representation of non-tested combinations with the representation given the tested combination.[4]

(c) Representation of non-tested combinations at the DOE prescribed minimum efficiency level for the product class.

Method (a) is already allowed for all central air conditioners. It is not, at this time, possible for products such as MEUS' multi-splits, because an ARM has not been developed for this type of product.

Method (b) is a reduction of method (a). In method (a), with an ARM, the efficiency of non-tested combinations is calculated based on a tested combination that has the same outdoor unit as the non-tested combinations. The calculation is based on physical parameters of the indoor unit such as face area, number of rows, refrigerant circuitry, etc. In general, the efficiency calculated in this way will be either higher or lower than the efficiency of the tested combination. However, no ARM has been developed for these products, so the Department is proposing to allow MEUS to represent temporarily that all combinations using a particular outdoor unit have the efficiency of the combination that has been tested with that outdoor unit. That is equivalent to characterizing the indoor unit as having no effect on the efficiency. The Department believes this is reasonable because the outdoor unit is the principal efficiency driver, and the required test procedure does not exactly fit these products, but tends to rate them very conservatively. This is because the products are capable of simultaneous heating and cooling, which is more efficient than requiring all zones to be either heated or cooled, and because the test procedure requires full load testing, which disadvantages these products, which are optimized for best efficiency when operating with less than full loads.

[4] Currently, no alternate rating method exists by which MEUS can rate its CITY MULTI VRFZ products. Given a waiver from applicable DOE test procedures and no alternate rating method, MEUS faces limitations in making representations with its CITY MULTI VRFZ products. As such, to comply with California state building codes, the California Energy Commission is requiring the MEUS represent its CITY MULTI VRFZ products as minimal efficiency commercial package air conditioner and heat pumps. (G. William Pennington, Manager Buildings Appliances Office, California Energy Commission, Letter to William Rau, Senior Vice President, General Manager, Mitsubishi Electric & Electronics USA, Inc, 16 June 2005) DOE believes that making a representation according to a tested combination would permit MEUS to make more accurate representations of its CITY MULTI VRFZ products.

Method (c) allows rating at the minimum standard level without testing because the Department believes the products' efficiency in actual use would be at least as great as conventional products with efficiencies at the minimum standard level, because the required efficiency descriptor rates the products at full load. The products have higher efficiency when operating at part-load conditions, and the products, in fact, normally operate at part-load conditions. Further, the multi-zoning feature of these products, which enables them to cool only those portions of the building which require cooling, uses less energy than if the whole building must be cooled when cooling is required.

V. Summary and Request for Comments

Today's notice announces a MEUS Petition for Waiver and grants MEUS an Interim Waiver from the test procedures applicable to MEUS's R410A MULTI CITY package air conditioner and heat pump units. The Department is publishing the MEUS Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that the Department is considering to include in the subsequent Decision and Order. In this alternate test procedure, the Department proposes defining a ''tested combination'' which MEUS could test in lieu of testing all retail combinations of its VRFZ MULTI CITY products. Furthermore, should a manufacturer not be able to test all retail combinations, DOE proposes allowing manufacturers to rate waived products according to an alternate rating method approved by DOE, to rate waived products as the same as that for the specified tested combination, or to rate at the minimum efficiency level without testing.

The Department is also considering amending the waiver previously issued to MEUS on August 27, 2004, because MEUS is making energy efficiency representations even though it previously had represented to the Department that such units could not be tested. Thus, MEUS sold untested units with energy efficiency ratings that had not been properly verified.

The Department is interested in receiving comments on all aspects of this notice. The Department is particularly interested in receiving comments and views of interested parties concerning the proposed alternate test procedure and the representations under consideration for the upcoming Decision and Order for the MEUS Petition, as well as for other similar air conditioner and heat pump cases. Specifically, the Department would like to receive comment on the following questions:

- Is it appropriate for MEUS to use the proposed test procedure for ratings, representations and compliance with state and local energy codes and regulatory requirements?
- What should the Department prescribe for manufacturers in situations where the defined tested combination is not testable or practical to test?
- Would it be appropriate for DOE to create a separate class for multi-split, zoned central air conditioner and heat pumps, as an alternative to prescribing an alternate test procedure or modifying existing central air conditioner and heat pump test procedures? In this case, such central air conditioner and heat pump models would not be subject to an energy standard until an appropriate test procedure is developed and prescribed.
- Should the Department allow energy efficiency representations for non-tested combinations of these products at the level of the tested combination?
- Should the Department allow energy efficiency representations for non-tested combinations at the DOE prescribed minimum efficiency level for the product class?
- Is the Department's proposed definition of ''tested combination'' useful and workable?
- Are there possible modifications to any test procedures or alternative rating methods which the Department could use to fairly represent the energy efficiency of MEUS R410A CITY MULTI products, as well as similar multi-split products from other manufacturers?

Any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is cited above.(10 CFR 431.201(d)(2), 10 CFR 430.27(b)(1)(iv)).

Issued in Washington, DC, on March 15, 2006.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

BILLING CODE 6450–01–P

MITSUBISHI ELECTRIC
Mitsubishi Electric & Electronics USA, Inc.
HVAC Advanced Products Division
3400 Lawrenceville-Suwanee Road, Suwanee, GA 30024

November 7, 2005

The Honorable Douglas Faulkner
Acting Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585-0121

Re: Petition for Waiver of Test Procedure and Application for Interim Waiver

Dear Assistant Secretary Faulkner:

Mitsubishi Electric & Electronics USA, Inc. (MEUS) respectfully submits this petition for waiver, and application for interim waiver, of the test procedures applicable to the new R410A models of MEUS's CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) product line pursuant to the provisions of 10 C.F.R. § 431.201 (2005). On August 27, 2004, the Department of Energy (DOE) granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's CITY MULTI products.[1] The CITY MULTI products covered by the 2004 waiver use R22 as the refrigerant. The products covered by this petition represent the version of the CITY MULTI product line that uses the new eco-friendly refrigerant R410A. Like the R22 version, the R410A CITY MULTI products cannot be tested according to the prescribed test procedures, and, therefore, should be granted a waiver from the applicable test procedures. MEUS simultaneously requests an interim waiver covering these new R410A CITY MULTI products.

I. Background

In the 2004 CITY MULTI Waiver, DOE found that the waiver should be granted because the CITY MULTI products have "one or more design characteristics which ... prevent testing of the basic model according to the prescribed test procedures."[2] Pursuant to the 2004 CITY MULTI Waiver, MEUS is not required to test or rate its CITY MULTI Variable Refrigerant Flow Zoning system products listed on the basis of the currently applicable test procedures.[3]

The refrigerant used by MEUS for its CITY MULTI line at the time of the 2004 CITY MULTI Waiver was R22. Before the end of 2005, MEUS plans to introduce new models in its CITY MULTI line of products that use R410A as a refrigerant. This change in refrigerant is driven by the mandates of the Montreal Protocol, and reflects a decision by MEUS's parent company to change all of its products, worldwide, from R22 to R410A during the course of the

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1 *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC-008)*, 69 Fed. Reg. 52660 (Aug. 27, 2004) (copy attached) (hereinafter, 2004 CITY MULTI Waiver).

2 *Id.* at 52662. *See also* 10 C.F.R. § 431.201(a)(1) (2005).

3 2004 CITY MULTI Waiver at 52662.

current year.[4] MEUS has established new model numbers for the R410A CITY MULTI products.

II. R410A Model Design Characteristics

MEUS's line of CITY MULTI VRFZ system products combines advanced technologies and are complete, commercial zoning systems that save energy through the effective use of variable refrigerant control and distribution, zoning diversity, and system intelligence. These systems have the capability of connecting a single outdoor unit to up to 32 indoor units. This capability gives these systems tremendous installation flexibility with billions of potential system combinations.[5]

The operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (i.e., on/off/heat/cool/auto/fan) and a different set temperature allowing great flexibility of operation. The variable speed compressor and the system controls direct refrigerant flow throughout the system to precisely match the performance of the system to the load of the conditioned areas. The compressor is capable of reducing its operating capacity to as little as 16% of its rated capacity. The outdoor fan motor also has a variable speed drive to properly match the outdoor coil to indoor loads. Zone diversity enables VRFZ systems to have a total connected indoor unit capacity of up to 150% of the capacity of the outdoor unit.

The CITY MULTI VRFZ systems have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. While other system compressors run at full load as their normal state, the CITY MULTI VRFZ systems run at part load as their normal state. Additionally, the CITY MULTI VRFZ R2-Series products offer consumers the option of simultaneous heating and cooling. These simultaneous heating and cooling systems achieve energy benefits by transferring heat recovered from one zone and discharging it into another zone needing heat.

MEUS's CITY MULTI VRFZ systems were designed to take into account the customers' specific needs for flexibility, variable conditioning, and operating energy savings. Through the use of highly advanced technology, CITY MULTI VRFZ systems offer cost-effective functionality and significant energy savings. The unique design and intelligence provided by the sophisticated direct digital control system allow the systems to use less energy than conventional systems to condition a given area, thus costing the customer less to operate. These systems have been well received in Asia, Europe, Latin America, and the United States because of their highly effective energy saving features. Since these products were first

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[4] Assuming this petition for waiver is granted, MEUS expects to shift from the R22 to R410A products. MEUS requests that the 2004 CITY MULTI Waiver continue in effect for at least six months after the grant of the waiver requested in this petition to provide MEUS sufficient time to sell the remaining inventory of its R22 CITY MULTI models.

[5] MEUS offers 58 indoor models in its R410A CITY MULTI product line. The number of potential combinations of the 58 models in sets of up to 32 is an astronomical figure. (Note, for instance, that there are over one billion possible combinations of 40 models in sets of 12.)

introduced in US markets, the CITY MULTI systems have become an important part of MEUS sales.

Although these energy saving characteristics are not credited under current rules, they are precisely the types of technological innovations and applications that advance the Congressional intent of promoting energy savings. These CITY MULTI VRFZ systems represent a revolutionary advance in HVAC technology, well positioned to provide new and existing commercial buildings with effective use of energy and operationally cost-effective source of heating and cooling. Additionally, with some of the innovative capabilities of the CITY MULTI Controls Network, the potential for energy management and energy savings are even greater. The CITY MULTI products' unique design characteristics are clearly consistent with U.S. government efforts to encourage the availability of high performance products that consume less energy.

III. Test Procedures from which Waiver is Requested

MEUS's petition requests waiver from the applicable test procedures for its new R410A CITY MULTI products. On October 21, 2004, DOE published a direct final rule, effective December 21, 2004, adopting the test procedures in ARI Standard 210/240-2003 for commercial package air conditioning equipment with capacities between 65,000 and 135,000 Btu/h and the test procedures in ARI Standard 340/360-2000 for commercial package air conditioning and heating equipment with capacities between 135,000 and 240,000 Btu/h.[6] The capacities of MEUS's R410A CITY MULTI products sold for commercial use fall in the range for both standards; both ARI 210/240-2003 and 340/360-2000 are applicable. Therefore, MEUS requests waiver from both ARI Standard 210/240-2003 and 340/360-2000.

MEUS also offers one outdoor unit model, the PUMY-P48TGMU-*, which has a capacity of 48,000 Btu/h.[7] While the test procedures for consumer products (10 C.F.R. Part 430, Subpart B, Appendix M) technically apply to this unit, MEUS markets and sells this unit with the rest of its CITY MULTI line of products, which are commercial products. The PUMY-P48TGMU-* is a member of the CITY MULTI family – it uses all of the same indoor units and controllers as those of the other CITY MULTI products. Therefore, MEUS has included this unit in this petition for waiver from the applicable test procedures.

IV. Basic Models for which Waiver is Requested

MEUS requests a waiver from the test procedures for the following basic product models[8]:

<u>CITY MULTI Variable Refrigerant Flow Zoning System R-2 Series Outdoor Equipment:</u>

- PURY-P72TGMU-*, 72,000 Btu/h 208/230-3-60 split-system variable-speed heat pump

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[6] *Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps*, Direct Final Rule, 69 Fed. Reg. 61962 (Oct. 21, 2004).

[7] The * denotes engineering differences in the models.

[8] The * denotes engineering differences in the models.

- PURY-P96TGMU-*, 96,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PURY-P108TGMU-*, 108,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PURY-P126TGMU-*, 126,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P144TGMU-*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P168TGMU-*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P192TGMU-*, 192,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P204TGMU-*, 204,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P216TGMU-*, 216,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P234TGMU-*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y-Series Outdoor Equipment:

- PUHY-P72TGMU-*, 72,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PUHY-P96TGMU-*, 96,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PUHY-P108TGMU-*, 108,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
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- PUHY-P144TGMU-*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P168TGMU-*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
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- PUHY-P234TGMU-*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System S-Series Outdoor Equipment:

- PUMY-P48TGMU-*, 48,000 Btu/h, 208/230-1-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

- P*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230-1-60 split-system variable-capacity air conditioner or heat pump
  - PCFY Series – Ceiling Suspended – PCFY-P12/18/24/30/36***-*
  - PDFY Series – Ceiling Concealed Ducted - PDFY-P06/08/12/ 15/18/24/30/36/48***-*
  - PEFY Series – Ceiling Concealed Ducted (Low Profile) - PEFY-P06/08/12***-*
  - PEFY Series – Ceiling Concealed Ducted (Alternate High Static Option) - PEFY-P15/18/24/27/30/36/48/54/72/96***-*
  - PEFY-F Series – Ceiling Concealed Ducted (100% OA Option) - PEFY-P 30/54/72/96***-*-*
  - PFFY Series – Floor Standing (Concealed) - PEFY-P06/08/12/ 15/18/24***-*
  - PFFY Series – Floor Standing (Exposed) - PEFY-P06/08/12/ 15/18/24***-*
  - PKFY Series – Wall-Mounted - PKFY-P06/08/12/18/24/30***-*
  - PLFY Series – 4-Way Airflow Ceiling Cassette - PEFY-P12/ 18/24/30/36***-*
  - PMFY Series – 1-Way Airflow Ceiling Cassette - PEFY-P06/08/12/15***-*

V. Need for Waiver of Test Procedure

In the 2004 CITY MULTI Waiver, DOE found that MEUS's CITY MULTI products contained "one or more design characteristics which ... prevent testing of the basic model according to the prescribed test procedures."[9] Except for the use of a different refrigerant and associated design changes, the new series has essentially the same operational characteristics as the R22 CITY MULTI products listed in the 2004 CITY MULTI Waiver. The R410A CITY MULTI systems can connect more indoor units than the test laboratories can physically test at one time, and it is not practical to test all of the potentially available combinations, of which there are more than one billion. Therefore, the same design characteristics which prevented testing of the basic R22 CITY MULTI models listed in the 2004 CITY MULTI Waiver also prevent testing of the R410A CITY MULTI models.

In the 2004 CITY MULTI Waiver, DOE found that:

> The current test procedure can be used to test all current commercial systems in the laboratory, but many VFRZ systems cannot be tested in the laboratory. Each VFRZ outdoor unit can be connected with up to sixteen separate indoor units in a zoned system. Existing test laboratories cannot test more than five indoor units at a time, and even that number is difficult.
>
> A second difficulty is that MEUS offers 58 indoor unit models. Each of these indoor unit models is designed to be used with up to 15 other indoor units, which need not be the same models, in combination with a single outdoor unit. For each of the CITY MULTI VRFZ outdoor coils, there are well over 1,000,000 combinations of indoor coils that can be matched up in a system configuration, and it is highly impractical to test so many combinations.
>
> There are therefore two major testing problems: (1) Test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units--only a small fraction of the combinations could be tested. These problems ... support the ... waiver criterion, that ``the basic model contains one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures. * * *"[10]

For the same reasons, the R410A models cannot be tested pursuant to the existing test procedures. Each of the R410A CITY MULTI indoor units is designed to be used with up to 18 other indoor units with the 108,000 Btu/h outdoor units and potentially 31 other indoor units with the 234,000 Btu/h outdoor units. These connected indoor units need not be the same models – there are 58 different indoor models that can be combined in a multitude of different combinations to address customer needs. The current test procedures provide no direction for determining what combination or combinations of outdoor and indoor units should be tested in these circumstances. The testing laboratories will not physically be able to test many of the R410A system combinations because of the inability to test products with so many indoor units.

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9 2004 CITY MULTI Waiver at 52662.

10 *Id.* at 52661-61.

In addition, it is not practical to test each possible combination. With the capability of potentially connecting a single outdoor unit to up to 32 indoor units, the R410A units are designed to be combined in literally billions of different system configurations.[11] The test procedure provides no mechanism for sampling component combinations. Thus, the test procedure does not contemplate, and cannot practicably be applied to, the CITY MULTI VRFZ systems consisting of multiple assemblies that are intended to be used in a very large number of different combinations.

As shown above, the R410A products cannot be tested according to the prescribed test procedures. MEUS also believes that the requested waiver is supported on the grounds that the test procedure "may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics ... as to provide materially inaccurate comparative data."[12] In particular, the benefits of variable refrigerant control and distribution, zoning diversity, part load operation and simultaneous heating and cooling, as described in Section II above, are not credited under the current test procedure.

In any case, it should be noted that these CITY MULTI products employ advanced technologies and their marketing will advance EPCA's goal of promoting energy efficiency. Testing procedures should not inhibit the commercial success of these products in the United States. Without a waiver of the test procedure, MEUS will be at a competitive disadvantage in the market. Consumers have come to expect the availability of the CITY MULTI products in the U.S. marketplace, and a significant number of engineers and contractors are currently designing projects using these products. The CITY MULTI products represent a significant share of MEUS product sales, which is fully expected to grow over the next several years. Thus, MEUS respectfully requests that DOE grant a waiver from the applicable test procedures to the products listed in Section IV.[13] MEUS plans to introduce these units into the U.S. market before the end of 2005, and, therefore, requests that DOE act on this request in a timely fashion.

VI. Alternative Test Procedures

Currently, there are no alternative test procedures known to MEUS that could evaluate these products in a representative manner. We note that the grant of this waiver will not be permanent, and will only remain in effect until DOE prescribes appropriate test procedures for these models. The Air-Conditioning and Refrigeration Institute (ARI), with leadership from MEUS, is actively pursuing efforts to develop an appropriate test protocol that could be presented to DOE. We are glad to report that good progress is being made in these efforts.

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[11] Even for systems with 4 or fewer indoor units, which can technically be tested in the laboratories, there are far too many possible combinations to make testing practicable because there are 58 different indoor models that can be used in combination. For instance, selecting four indoor units from among 40 indoor model choices produces over one hundred thousand possible combinations.

[12] 10 C.F.R. § 431.201(a)(1) (2005).

[13] Pursuant to EPCA, MEUS will not make representations regarding the energy efficiency of the products covered by a waiver except as may be specifically authorized by DOE.

VII. Similar Products

To the best of our knowledge, VRFZ products are also offered in the United States by Samsung Electronics Company, Ltd., Sanyo Fisher (USA) Corp., Daikin U.S. Corporation, Fujitsu General America, and LG Electronics U.S.A., Inc. Each of the manufacturers has incorporated a different technology to achieve variable refrigerant flow.

VIII. Application for Interim Waiver

Pursuant to 10 C.F.R. § 431.201(a)(2), MEUS also submits an application for interim waiver of the applicable test procedures for the R410A CITY MULTI models listed above. As DOE has previously stated, "an Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for the Petition for Waiver."[14] MEUS will experience economic hardship if the application for interim waiver is denied. Additionally, precedent indicates that DOE will likely grant MEUS's petition for waiver. Finally, it is in the public interest to grant an interim waiver. Therefore, MEUS respectfully requests DOE to grant the application for interim waiver.

MEUS plans to introduce the new R410A products into the U.S. market before the end of 2005. The procedure for granting a petition for waiver is a time-consuming process – DOE must publish the petition in the Federal Register, allow time for public comment, and then consider any comments before it makes a decision. Thus, the process typically takes a number of months. If an interim waiver is not granted, MEUS will suffer economic hardship because MEUS will be required to delay its introduction of these products to U.S. customers.[15]

In addition, DOE will likely grant MEUS's petition for waiver. As described above, the design characteristics which prevented testing of the basic model of the products listed in the 2004 CITY MULTI Waiver are present for the new R410A models as well. The best evidence that DOE is likely to grant this waiver petition is the fact that it granted essentially the same petition in the 2004 CITY MULTI Waiver. DOE also granted an interim waiver to Samsung Air Conditioning earlier this year stating that Samsung's petition would likely be granted because Samsung's products are quite similar to the MEUS's CITY MULTI products, for which DOE already granted a waiver.[16]

Finally, DOE's regulations state that the Assistant Secretary may grant an interim waiver if he determines that it would be desirable for public policy reasons to grant immediate

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[14] *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Samsung Air Conditioning From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC-009)*, 70 Fed. Reg. 9629, at 9630 (Feb. 28, 2005). *See* 10 C.F.R. § 431.201(e)(3) (2005).

[15] MEUS has been in discussion with DOE staff for several months regarding this issue. Only recently did it become apparent that a new petition for waiver would be required.

[16] 70 Fed. Reg. at 9630.

relief pending a determination for the Petition for Waiver. In response to a previous application for interim waiver, DOE stated that "in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis."[17] MEUS's R410A CITY MULTI products are essentially the same as the products that were granted a waiver in the 2004 CITY MULTI Waiver, and are similar to the products for which Samsung Air Conditioning was granted an interim waiver in February 2005.[18] Therefore, since it is in the public interest to have similar products tested and rated on a comparable basis, DOE should grant MEUS's Application for Interim Waiver.

IX. Conclusion

MEUS seeks a waiver of the applicable test procedures for the products listed in Section IV above. Such a waiver is necessary because the basic R410A CITY MULTI models "contain[] one or more design characteristics which ... prevent testing of the basic model according to the prescribed test procedures."[19] MEUS respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as an appropriate test procedure is developed and adopted for this class of products. MEUS expects to continue working with ARI to develop appropriate test procedures for consideration by DOE.

MEUS further requests DOE to grant its request for an interim waiver while its petition for waiver is pending.

If you have any questions or would like to discuss this request, please contact Paul Doppel, at (678) 376-2923, or Douglas Smith at (202) 298-1800. We greatly appreciate your attention to this matter.

Sincerely,

William Rau
Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
4300 Lawrenceville-Suwanee Road
Suwanee, GA 30024

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17 70 Fed. Reg. at 9630.

18 *Id.*

19 10 C.F.R. § 431.201(a)(1) (2005).

MITSUBISHI ELECTRIC
Mitsubishi Electric & Electronics USA, Inc.
HVAC Advanced Products Division
3400 Lawrenceville-Suwanee Road, Suwanee, GA 30024

CERTIFICATE

I hereby certify that I have this day served the foregoing Petition for Waiver and Application for Interim Waiver upon the following companies known to Mitsubishi Electric & Electronics USA, Inc. to currently market systems in the United States which appear to be similar to the R410A CITY MULTI VRFZ system design. I have notified these manufacturers that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Samsung Air Conditioning
Samsung Electronics Company, LTD.
2865 Pellissier Pl.
Whittier, CA 90601
Attn: John Miles, Director, Engineering & Technical Support

Sanyo Fisher (USA) Corp.
1165 Allgood Road
Suite 22
Marietta, GA 30062
Attn: Tetsushi Yamashita, Engineering Manager, HVAC

Daikin U.S. Corporation
375 Park Ave.
Suite 3308
New York, NY 10152
Attn: Gary Nettinger, Director of Product Support

Fujitsu General America
353 Route 46 West
Fairfield, NJ 07004
Attn: Mr. Roy Kuezera, Vice President of Sales, HVAC Products

LG Electronics U.S.A., Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632
Attn: Mark O'Donnell

Dated this 7th day of November 2005.

William Rau
Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
3400 Lawrenceville-Suwanee Road
Suwanee, GA 30024

[FR Doc. 06–2842 Filed 3–23–06; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Shoreline Management Plan and Soliciting Comments, Motions To Intervene, and Protests

March 16, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Shoreline Management Plan.

b. *Project No:* 2210–131.

c. *Dates Filed:* March 16, 2006.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania,Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Frank M. Simms, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2875.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov* or Mr. Bob Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for filing comments and or motions:* April 14, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–131) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee requests to amend the July 5, 2005 Order Modifying and Approving Shoreline Management Plan (112 FERC ¶ 61,026) to revise ordering paragraph (D) from: ''All in-water construction, except pile driving and associated above water dock construction activities, is prohibited from February 15 through June 15. Pile driving and associated in-water dock construction activities are prohibited from April 15 to June 15. Installation or maintenance of navigational markers is exempt from these time-of-year restrictions.'' To ''All in-water construction, except pile driving and associated above water dock construction activities, is prohibited from February 15 through June 15. Pile driving shall include the removal of existing piles necessary for construction of the associated facility and be limited to only piling installed utilizing impact equipment.''

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E6–4253 Filed 3–23–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–85–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

March 17, 2006.

On March 10, 2006, in Docket No. CP06–85–000, CenterPoint Energy Gas Transmission Company (CEGT), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 subpart A of the Federal Energy Regulatory Commission's (Commission) regulations requests authorization to construct, own, and operate the Carthage to Perryville Project designed to receive and transport 1.237 billion cubic feet per day of natural gas. The project would consist of: 171.9 miles of 42-inch diameter pipeline; compression totaling 41,240 hp at two compressor stations; meter and regulator stations at receipt points with 3 Texas intrastate pipelines; interconnections with 4 interstate pipelines; and, appurtenant facilities. The facilities will operate separately from CEGT's existing pipeline system, and CEGT is seeking implementation of a fixed charge for Fuel Use and Lost and Unaccounted For Gas (LUFG) applicable to transportation on the new facilities, all as more fully described in the application. CEGT seeks waiver of the Commission's regulations such that the 30-day comment period for the Final Environmental Impact Statement may coincide with the 30-day requested certificate order's rehearing period and that notational voting be used to extent this approach would expedite the order's issuance. CEGT requests that the Commission issue requested authorizations by October 30, 2006 so that facilities may be operable in time

for the 2006–2007 winter heating season.

On November 10, 2005, the Commission staff granted CEGT's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–1–000 to staff activities involving CEGT. Now, as of the filing of CEGTs application on March 10, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, CEGT's proceeding will be conducted in Docket No. CP06–85–000.

Questions concerning the application should be directed to: Lawrence O. Thomas, Director-Rates & Regulatory at CenterPoint Energy Gas Transmission Co., P.O. Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–2804; Mark C. Schroeder, Vice President & General Counsel at CenterPoint Energy Gas Transmission Co., P.O. Box 1700, Houston, TX 77210–1700, or by calling (713) 207–3395; and, Richard D. Avil, Jr. and Jonathan Christian at Jones Day, 51 Louisiana Ave., NW., Washington, DC 20001 or by calling 202–879–3939.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4234 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–86–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

March 16, 2006.

Take notice that on March 10, 2006, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP06–86–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.216) for authorization to abandon certain facilities in the State of Louisiana, under CEGT's blanket certificate issued in Docket Nos. CP82–384–000 and 001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

CEGT proposes to abandon, by sale and transfer, certain above-ground facilities that are currently a part of various CEGT delivery point facilities in the State of Louisiana as described more fully in the request. CEGT further proposes to sell and transfer these facilities to CenterPoint Energy Louisiana Gas, a distribution division of CenterPoint Energy Gas Resources Corp, d/b/a, at the estimated net book value, which as of December 31, 2005 is $14,895.43. CEGT states that no services would be abandoned as a result of the proposed sale and transfer. Louisiana Gas, it is said, would own and operate these facilities as part of its distribution system.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director—Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804 or fax (318) 429–3133.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4249 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–87–000]

Dominion Transmission, Inc.; Notice of Application

March 16, 2006.

Take notice that Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA 23219, filed in Docket No. CP06–87–000 on March 13, 2006, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon, by removal, one 440 hp compressor unit and appurtenant facilities at the Rochester Mills Compressor Station, located in Indiana County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificate, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, VA 23219; (804) 819–2877 (telephone) or (804) 819–2064 (fax) or e-mail: *MatthewRBley@dom.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: April 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4250 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–84–000]

Florida Gas Transmission Company, Transcontinental Gas Pipe Line Corporation; Notice of Joint Application for Abandonment

March 16, 2006.

Take notice that on March 9, 2006, Florida Gas Transmission Company (Florida Gas), and Transcontinental Gas Pipe Line Corporation (Transco), collectively referred to as Applicants, filed a joint application in abbreviated format pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of the transportation and exchange services provided pursuant to the following rate schedules:

Transco rate schedule	Florida Gas rate schedule
X–35	E–1.
X–78	E–10.
X–128	E–13.
X–152	
X–157	
X–197	
X–215	
X–263	

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4257 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–272–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 16, 2006.

Take notice that on March 13, 2006, Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised substitute tariff sheets to become effective April 12, 2006:

Fourth Revised Sheet No. 0
Second Revised Sheet No. 219
Second Revised Sheet No. 220
First Revised Sheet No. 220B
Second Revised Sheet No. 230
First Revised Sheet No. 232B
Second Revised Sheet No. 241
Second Revised Sheet No. 242
First Revised Sheet No. 244
Third Revised Sheet No. 281
First Revised Sheet No. 283B
Second Revised Sheet No. 289
Second Revised Sheet No. 295A

Garden Banks states that the above-referenced tariff sheets are being filed to reflect a change in the person designated to receive communications regarding its Tariff, and to remove references to Enchilada Gas Pipeline, LLC, which no longer owns an interest in Garden Banks.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4248 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–085]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

March 17, 2006.

Take notice that on March 14, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective March 15, 2006:

Seventh Revised Sheet No. 24.
Original Sheet No. 29.

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–4233 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–270–000]

Guardian Pipeline, L.L.C.; Notice of Tariff Filing

March 16, 2006.

Take notice that on March 8, 2006, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 202A, to become effective April 7, 2006.

Guardian states that the purpose of this filing is to remove the tariff provision implementing the Commission's CIG/Granite State policy as now permitted by the Commission in a March 3, 2005 Order in Williston Basin Interstate Pipeline Company, Docket No. RP00–463–006 (110 FERC ¶ 61,210).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4255 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–271–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 16, 2006.

Take notice that on March 10, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 145, to be effective on April 9, 2006.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4256 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–269–000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 16, 2006.

Take notice that on March 7, 2006, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Nineteenth Revised Sheet No. 10, to become effective April 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4254 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT95–11–008]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

March 16, 2006.

Take notice that on March 10, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing a refund report regarding collection of Kansas ad valorem taxes in Southern Star's Docket No. GT95–11–007.

Southern Star states that this filing is being made in compliance with a Commission order requiring Southern Star to continue to make refunds of ad valorem tax collections and to file refund reports.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on March 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4251 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2978–005, 2979–006 and 2980–007]

Traverse City Light and Power Board; Notice Denying Late Interventions

March 17, 2006.

On October 25, 2005, Traverse City Light and Power Board (Traverse City) filed applications to surrender its license for the Brown Bridge Project No. 2978 and its exemptions from licensing for the Sabin Project No. 2980 and Boardman Project No. 2979.[1] The projects are located on the Boardman River, Traverse City, Grand Traverse County, Michigan.

On November 9, 2005, the Commission issued a notice of application for surrender of license and exemptions, and solicited comments, protests, and motions to intervene. The notice established December 9, 2005, as the deadline for filing comments, protests, and motions to intervene. 70 FR 69754 (2005).

On February 28, 2006, Boardman River Riparian Property Owners (Boardman) filed a motion for late intervention in all three projects. On March 9, 2006, Community Hydro Partners (Community) filed a motion for late intervention in all three projects. On March 13, 2006, Traverse City filed an answer in opposition to the motions.

Boardman states that it missed the intervention deadline of December 9, 2005, because it was not informed of or aware of its rights to intervene in the proceeding until the week before filing its motion. Community states that it missed the deadline because it was not aware that Traverse City had filed a motion to surrender until February 9, 2006.

Boardman's statement that it was not aware of its rights to intervene until a week before filing its motion and Community's explanation that it did not learn of the project until February 9, 2006, do not constitute good cause. *See California Independent System Operator Corp.,* 91 FERC ¶61,243 at 61,876 (2000) (that movants did not learn of the intervention deadline in time to submit a timely motion to intervene does not amount to good cause under 18 CFR 385.214(d)).

The motions for late intervention in these proceedings filed by Boardman and Community are denied.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4236 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Traverse City has proposed to surrender the projects, which would include decommissioning of the generating facilities but would not include removal of any of the dams. No construction activities are proposed and existing conditions (*i.e.,* lake levels, etc.) would remain.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–273–000]

Viking Gas Transmission Company; Notice of Tariff Filing

March 17, 2006.

Take notice that on March 14, 2006, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 48, to become effective April 13, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4238 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 16, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2330–041.
Applicants: ISO New England Inc.
Description: ISO New England, Inc. submits its Fourteenth Quarterly Status Report, pursuant to FERC's September 20, 2002 Order.
Filed Date: March 13, 2006.
Accession Number: 20060315–0211.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER04–805–002; ER02–237–006.
Applicants: Wabash Valley Power Association, Inc.; J. Aron & Company.
Description: Wabash Valley Power Association, Inc. and J. Aron & Co. submit a notice of non-material change in status, in compliance with the reporting requirements adopted in FERC's Order 652.
Filed Date: March 10, 2006.
Accession Number: 20060315–0216.
Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Docket Numbers: ER04–805–003.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits revisions to Original Sheet 1A et al to FERC Electric Tariff, Original Volume 2 pursuant to Order 652.
Filed Date: March 13, 2006.
Accession Number: 20060315–0212.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER04–961–006.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Schedule 2 of its Open Access Transmission & Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1.
Filed Date: March 9, 2006.
Accession Number: 20060315–0209.
Comment Date: 5 p.m. eastern time on Thursday, March 30, 2006.

Docket Numbers: ER05–386–003.
Applicants: Interstate Power Company; Midwest Independent System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. and Interstate Power Company jointly submit a Revised and Restated Agreement for Integrated Transmission Area with Central Iowa Power Coop, et al, pursuant to FERC's December 20, 2005 Order.
Filed Date: March 10, 2006.
Accession Number: 20060315–0213.
Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Docket Numbers: ER06–71–002.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Co. submits modifications to SPS Rate Schedule 118.
Filed Date: March 9, 2006.
Accession Number: 20060315–0208.
Comment Date: 5 p.m. eastern time on Thursday, March 30, 2006.

Docket Numbers: ER06–319–002.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits a compliance filing pursuant to FERC's February 9, 2006 Order.
Filed Date: March 13, 2006.
Accession Number: 20060315–0210.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–714–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement with FirstEnergy Nuclear Operating Co, *et al.*
Filed Date: March 10, 2006.
Accession Number: 20060315–0010.
Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Docket Numbers: ER06–716–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc.'s unexecuted Second Revised and Restated Generator Interconnection and Operating Agreement btw FirstEnergy Nuclear Operating Co. & American Transmission Systems, Inc.
Filed Date: March 10, 2006.
Accession Number: 20060315–0009.
Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Docket Numbers: ER06–717–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits revised rates for existing transmission contracts.
Filed Date: March 10, 2006.
Accession Number: 20060315–0220.
Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Docket Numbers: ER06–719–000.
Applicants: Wabash Valley Power Association, Inc.
Description: Cinergy Services Inc, on behalf of the Cincinnati Gas & Electric Co. et al submits Cancellation Agreement to their Interconnection Agreement, effective December 31, 2005.
Filed Date: March 13, 2006.
Accession Number: 20060315–0004.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–720–000.
Applicants: Twelvepole Creek, LLC.
Description: Twelvepole Creek LLC submits a notice canceling its FERC Electric Rate Schedule 1.
Filed Date: March 13, 2006.
Accession Number: 20060315–0005.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–721–000.
Applicants: American Electric Power Service Corporation.
Description: The American Electric Power Service Corp agent for Kentucky Power Co. et al submits an interconnection agreement with Louisville Gas & Electric Co. *et al.*
Filed Date: March 13, 2006.
Accession Number: 20060315–0006.
Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–722–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy Co. submits its Notice of Cancellation of its

Facilities Agreement with Alpena Power Generation, LLC.

Filed Date: March 13, 2006.

Accession Number: 20060315–0007.

Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–723–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits an amendment to the ISO Tariff, to establish the Interim Reliability Requirements Program.

Filed Date: March 13, 2006.

Accession Number: 20060315–0011.

Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–724–000.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England Inc. and New England Power Pool Participants Committee jointly submit several proposed changes to the ISO New England Information Policy.

Filed Date: March 13, 2006.

Accession Number: 20060315–0002.

Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER06–725–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Co submits two notices of cancellation, Service Agreement 28 and Service Agreement 24, to be canceled effective March 15, 2006 etc.

Filed Date: March 13, 2006.

Accession Number: 20060315–0001.

Comment Date: 5 p.m. eastern time on Monday, April 3, 2006.

Docket Numbers: ER96–719–009; ER99–2156–007.

Applicants: MidAmerican Energy Company; Cordova Energy Company LLC.

Description: MidAmerican Energy Co. & Cordova Energy C LLC submit a Notice of Change in Status re the change in ownership of their indirect parent, MidAmerican Energy Holdings Co.

Filed Date: March 10, 2006.

Accession Number: 20060315–0215.

Comment Date: 5 p.m. eastern time on Friday, March 31, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4231 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PH06–24–000, et al.]

Utility Pipeline Limited, et al.; Electric Rate and Corporate Filings

March 16, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Utility Pipeline Limited

[Docket No. PH06–24–000]

Take notice that on March 10, 2006, Utility Pipeline Limited filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c) of the Commission's regulations on the basis that it is a single state holding company.

Comment Date: 5 p.m. eastern time on March 31, 2006.

2. Alliant Energy Generation, Inc.

[Docket No. PH06–25–000]

Take notice that on March 10, 2006, Alliant Energy Generation, Inc. filed a Notice of Exemption from the Requirements of The Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(b) and 366.4(b) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on March 31, 2006.

3. NSTAR, Boston Edison Company

[Docket No. PH06–26–000]

Take notice that on March 10, 2006, NSTAR on behalf of itself and Boston Edison Company filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c) of the Commission's regulations on the basis that they are single state holding companies.

Comment Date: 5 p.m. eastern time on March 31, 2006.

4. Maine & Maritimes Corporation

[Docket No. PH06–27–000]

Take notice that on March 13, 2006, Maine & Maritimes Corporation filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c), and 366.4(c) of the Commission's regulations on the basis that it is a single state holding company and owns less than 100 MW of generation.

Comment Date: 5 p.m. eastern time on April 3, 2006.

5. Wisconsin Energy Corporation

[Docket No. PH06–28–000]

Take notice that on March 13, 2006, Wisconsin Energy Corporation filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c) of the Commission's regulations on the basis that it is a single state holding company.

Comment Date: 5 p.m. eastern time on April 3, 2006.

6. Wisconsin Electric Power Company

[Docket No. PH06–29–000]

Take notice that on March 13, 2006, Wisconsin Electric Power Company filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c) of the Commission's regulations on the basis that it is a single state holding company.

Comment Date: 5 p.m. eastern time on April 3, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–4232 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–93–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Filings

March 17, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern California Edison Company

[Docket No. EC06–93–000]

On March 10, 2006, Southern California Edison Company (SCE) submitted an application pursuant to section 203 of the Federal Power Act for authorization of the purchase by SCE from the City of Anaheim, California (Anaheim) of Anaheim's 3.16 percent undivided interests as tenants in common in Units 2 and 3 of the San Onofre Nuclear Generating Station (SONGS), a nuclear power plant with a total capacity of 2,150 MW located in San Diego County, California. Anaheim's interest in SONGS represents 68 MW.

Comment Date: 5 p.m. eastern time on April 3, 2006.

2. Devon Power LLC, Montville Power LLC, Norwalk Power LLC, Middletown Power LLC

[Docket No. ER04–23–016]

Take notice on March 3, 2006, Devon Power LLC, Montville Power LLC, Norwalk Power LLC, and Middletown Power LLC, (NRG Companies), filed its Settlement Cost-of-Service Agreement, among the NRG Companies, NRG Power Marketing, Inc. and ISO New England, Inc., and its final reconciliation schedule.

Comment Date: 5 p.m. eastern time on March 24, 2006.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–1475–004]

Take notice that on March 14, 2006, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a revision to its March 8, 2006 compliance filing, correcting a revised tariff sheet to its Large Generator Interconnection Agreement.

Comment Date: 5 p.m. eastern time on March 29, 2006.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER06–731–000]

Take notice that on March 10, 2006, Midwest Independent Transmission System Operator, Inc. filed a Request for Extension of Board Constrained Area Mitigation provisions contained in Module D of its Open Access Transmission and Energy Markets Tariff, pursuant to the Commission's Order issued on November 8, 2004.

Comment Date: 5 p.m. eastern time on March 31, 2006.

5. Midland Cogeneration Venture Limited Partnership

[Docket No. ER06–733–000]

Take notice that on March 15, 2006 Midland Cogeneration Venture Limited Partnership filed an application for order accepting its initial market-based rate tariff and granting certain waivers and blanket approval, pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's Regulations.

Comment Date: 5 p.m. eastern time on April 5, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4240 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–64–000]

Central New York Oil and Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Stagecoach Phase II Expansion Project and Request for Comments on Environmental Issues and Notice of Site Visit

March 17, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Stagecoach Phase II Expansion Project, involving construction and operation of facilities by Central New York Oil and Gas, LLC (CNYOG) in Tioga County, New York and Bradford County, Pennsylvania.[1] The EA will be used by the Commission in its decision-making process to determine whether the project is the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 17, 2006.

An effort is being made to send this notice to all individuals, organizations, Native American Tribes, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' was attached to the project notice (CNYOG) provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

The entire Stagecoach Storage Field would consist of a total of six reservoirs (''pools''), two of which and were converted into storage reservoirs as part of the original Stagecoach Phase I construction, and four of which are nearly depleted production reservoirs and would be added to the Stagecoach Storage Facility as part of the Phase II Expansion Project. The existing Stagecoach Storage Facility consists of the Barnhart-Owen and Widell pools, ten storage wells, seven observation wells, about 12 miles of interconnecting pipeline, and a central compressor facility. The existing working storage capacity is 13.25 Billion cubic feet (Bcf).

The Phase II Expansion Project would develop the four remaining pools (Lidell, Racht, Brenchley-Cook, and Nichols-Mead pools) for an additional working storage capacity estimated at 13 Bcf.

As part of the proposed expansion, CNYOG would construct:

- An additional 12,000-horsepower electric-drive centrifugal compressor unit to be installed within the existing Stagecoach Central Compressor Station building;
- A power transformer and gas cooling unit and other appurtenant facilities to be installed within the Central Compressor Station;
- A total of nine storage injection/withdrawal wells;[2]
- Approximately 7.3-miles of 6-inch-, 8-inch-, and 20-inch-diameter gathering pipeline and associated rights-of-way;
- Eight wellhead meter stations and other appurtenant facilities, including isolation valves, separators, measurement and communication equipment, and a 20-foot by 70-foot building at each storage well site to house equipment; and
- About 4.4 miles of access roads not contained within pipeline or well easements.

As part of the storage facility, CNYOG also proposes to construct and operate a 9.3-mile-long, 24-inch-diameter lateral (North Lateral) from the existing compressor station to the proposed Millennium Pipeline located north of the town of Owego, New York.[3] Its appurtenant facilities will include measurement and regulation, communication, isolation valves, and pigging facilities.

The general location of CNYOG's proposed facilities is shown on the map attached as appendix 1.[4]

Land Requirements for Construction

Construction of the proposed facilities would require about 278.1 acres of land. Of this acreage, 115.5 acres would be permanently affected. The remaining 162.6 acres would be temporarily impacted and allowed to revert to its former use. Each of CNYOG's nine test/storage wells would temporarily disturb about a 250-foot-radius area.

A 100-foot-wide construction right-of-way is proposed for the North Lateral pipeline facilities, and a 50-foot-wide construction right-of-way is proposed for all pipeline laterals to the storage wells. The North Lateral construction

[1] CNYOG's application in Docket No. CP06–64–000 was filed with the Commission under section 7 of the Natural Gas Act.

[2] Four of the wells (one in each of the Lidell, Racht, Brenchley-Cook, and Nichols-Mead pools) would be drilled during the late spring/early summer of 2006 under the existing FERC authorization for the Stagecoach Storage Facility issued in 2001 (Docket No. CP00–62–000). The remaining five storage wells would be located within the Lidell Pool and would be drilled once CNYOG receives any approval for the Phase II Expansion Project.

[3] The Millennium Pipeline Project was approved by the Commission on September 19, 2002 in Docket Nos. CP98–150–006 and –007. Construction of the Millennium Pipeline has not commenced to date.

[4] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

area parallels/crosses a New York State Electric and Gas Company (NYSEG) electric transmission line for about 2,852 feet. The North Lateral follows the same general alignment as an existing Columbia Gas pipeline across the Susquehanna River north to the proposed Millennium Pipeline interconnect. CNYOG would maintain a 50-foot permanent right-of-way for operation of the pipeline facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we [5] will discuss impacts that could occur as a result of the construction and operation of the proposed project. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. The EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

Our independent analysis of the issues will be presented in the EA. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[5] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local government agencies; public interest groups; Native American tribes; interested individuals; affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review if the EA is published. We will consider all comments submitted in any Commission Order that is issued for the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP06–64–000.
- Mail your comments so that they will be received in Washington, DC, on or before April 17, 2006.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Public Meeting

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the project area. The location for this meeting is listed below. The meeting is scheduled for Tuesday, April 4, 2006 from 7 p.m. to 10 p.m.

Owego Treadway Inn, 1100 State Route 17C, Owego, NY 13827. (607) 687–4500.

Public scoping meetings are designed to provide State and local agencies, interested groups, affected landowners, and the general public with another opportunity to offer comments on the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EA.

Site Visit

On April 5, 2006, the FERC staff will conduct a site visit of the Stagecoach Storage Facility. The purpose of the visit will be to inspect both the existing storage facility and the proposed Stagecoach Phase II Expansion Project. We will view the proposed storage field expansion, well sites, and associated pipeline routes. Representatives of CNYOG will be accompanying the FERC staff.

All interested parties may attend the site visit on April 5, 2006. Those planning to attend must provide their own transportation. If you are interested in attending the site visit, please meet at 8 a.m. in the lobby of the Owego Treadway Inn at the address listed above.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervener''. To become an intervener you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Interveners have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all

other interveners identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing. Please refer to Appendix 2 if you would like more information on how to intervene in Commission proceedings.

Affected landowners and parties with environmental concerns may be granted intervener status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervener status to have your environmental comments considered.

Environmental Mailing List

If you do not want to remain on our mailing list, please return the Remove From Mailing List Form included in Appendix 3. If you return this form, you will be removed from the Commission's environmental mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, CP06–64–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4239 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–53–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 2006–2008 Expansion Project and Request for Comments on Environmental Issues

March 15, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental assessment (EA) that will discuss the environmental impacts of Eastern Shore Natural Gas Company's (ESNG) proposed 2006–2008 Expansion Project involving construction and operation of natural gas pipeline facilities in Chester County, Pennsylvania, and New Castle, Kent, and Sussex Counties, Delaware.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

The purpose of ESNG's project is to increase the capacity of its existing pipeline system to accommodate growing demand within its market area. To meet this demand, ESNG would construct about 55 miles of various diameter pipeline and two new meter stations. Specifically, ESNG proposes to add 15.0 miles of mainline pipeline, 40.0 miles of looping pipeline and appurtenant facilities. The project is composed of seven segments and includes:

- *Segment 1 (Chester County, PA)*—About 1.5 miles of 16-inch-diameter pipeline, looping ESNG's existing 8-inch-diameter Parkesburg mainline;
- *Segment 1A (Chester County, PA)*—About 0.6 mile of 16-inch-diameter pipeline, looping ESNG's two existing pipelines;
- *Segment 2 (New Castle and Kent Counties, DE)*—About 23.8 miles of 16-inch-diameter pipeline, looping ESNG's existing 10-inch-diameter Hockessin mainline;
- *Segment 3 (New Castle County, DE)*—About 6.1 miles of 10-inch-diameter pipeline, looping ESNG's existing 6-inch-diameter Parkesburg mainline;
- *Segment 4 (Sussex County, DE)*—About 4.0 miles of 10-inch-diameter pipeline, looping ESNG's existing 6-inch-diameter Parkesburg mainline;
- *Segment 5 (Sussex County, DE)*—About 4.0 miles of 10-inch-diameter pipeline, looping ESNG's existing 6-inch-diameter Cambridge/Easton mainline; and
- *Segment 6 (Sussex County, DE)*—About 15.0 miles of 6-inch-diameter pipeline to tie into an existing ESNG 6-inch-diameter pipeline upstream and extend southerly to Millsboro, DE.

ESNG also proposes to construct two new metering stations located at Mileposts 10.4 and 15.0 as part of Segment 6.

The general locations of the project facilities are shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 752.46 acres of land including some of ESNG's existing permanent easement. Following construction, about 1.52 acres would be maintained for new permanent easement and operation of the aboveground facility sites. The remaining 750.94 acres of land would be restored and allowed to revert to its former use.

[1] ESNG's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ESNG. This preliminary list of issues may be changed based on your comments and our analysis.

Project-related impact on:

- Residences or structures within 50 feet of construction work space;
- Wellhead Water Resource Protection Areas;
- Effects to private water wells;
- Waterbody crossings;
- Construction effects to the Chesapeake and Delaware Canal, Drawyer Creek and the Appoquinimink River;
- Effect to category 5 impaired waterbodies; and
- Restoration of natural landscape.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and/or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP06–53–000.
- Mail your comments so that they will be received in Washington, DC on or before April 17, 2006.

Scoping Meeting

The public scoping meetings are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of the meetings will be generated so that your comments will be accurately recorded. There will be one scoping meeting in a centralized location for all segments of the project.

2006–2008 Expansion Project

Wednesday—March 29, 2006, 7 p.m. (EST), The AmericInn, 1259 Corn Crib Road, Harrington, DE 19952, (302) 398–3900.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4229 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 15, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1051–012.

c. *Date Filed:* August 29, 2005.

d. *Applicant:* Alaska Power & Telephone Company (AP&T).

e. *Name of Project:* Skagway-Dewey Lakes Project.

f. *Location:* On Pullen, Dewey, Reid, Icy, and Snyder Creeks within the city limits of Skagway, Alaska. The project does not utilize any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Grimm, AP&T, PO Box 3222, Port Townsend, Washington 98368, (360) 385–1733, ext. 120.

i. *FERC Contacts:* Alan Mitchnick, (202) 502–6074, *alan.mitchnick@ferc.gov*; or Shana Murray, (202) 502–8333, *shana.murray@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is now is ready for environmental analysis.

l. *Project Description:* Water from Reid Falls, Icy Creek, and Snyder Creek is diverted to Lower Dewey Lake, which in turn, flows into Dewey reservoir. The project withdraws water from Dewey reservoir to supply the powerhouse. Existing project features include: the 26-foot-long, 8-foot-high Reid Falls diversion dam that diverts water into a 14-inch-diameter, 1,280-foot-long steel pipeline running to Icy Creek; the 102-foot-long, 5-foot-high Icy Lake dam impounding the 3.4-acre Icy Lake; the 30-foot long and 3-foot-high Snyder Creek diversion dam that diverts water from Snyder Creek into a diversion channel that conveys water to Lower Dewey Lake; the 629-foot-long, 28-foot-high Lower Dewey Lake dam, impounding the 32.8-acre Lower Dewey Lake; the 132-foot-long, 30-foot-high, Dewey reservoir dam, impounding 2.7 acres; a 300-foot-long canal running between Lower Dewey Lake and Dewey reservoir; three penstocks that run from the Dewey reservoir dam about 1,850 feet to the project's powerhouse that sits adjacent to Pullen Creek within the City of Skagway; and a powerhouse containing four turbines with a total installed capacity of 943 kilowatts. No changes to the project are proposed.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4228 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 16, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance from Article 401 of the License.

b. *Project No.:* 1494–293.

c. *Date Filed:* March 15, 2006.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robert W. Sullivan, Jr., Assistant General Manager, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301–0409. Tel: (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or vedula.sarma@ferc.gov.

j. *Deadline for filing comments and/or motions:* 10 days from the date of issuance.

k. *Description of Filing:* Because of the current drought situation in the basin, as an emergency measure, Grand River Dam Authority proposes to temporarily modify the rule curve set forth in Article 401 of the license by drawing Grand Lake below elevation 742 feet (Pensacola Datum) to maintain a minimum elevation of 614 feet mean sea level at Lake Hudson. Lake Hudson is a source for public water supply to the towns of Locust Grove, Adair, Salina, and Rural Water District No. 6.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4252 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05–17–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of a Public Meeting To Receive Environmental Comments on the Alternative Locations for the Massachusetts Compressor Station as Part of the Maritimes Phase IV Project

March 17, 2006.

On December 16, 2005, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement For the Proposed Maritimes Phase IV Project and Request for Comments on Environmental Issues and Notice of Public Scoping Meetings* (NOI) in response to Maritimes & Northeast Pipeline, L.L.C. (Maritimes) request to initiate the prefiling process for its Maritimes Phase IV Project.[1]

In a January 31, 2006 filing, Maritimes identified its preferred location for the Massachusetts Compressor Station along

[1] The Maritimes Phase IV Project consists of the construction of about 146 miles of pipeline loops in Maine and six new compressor stations in Maine and Massachusetts. In addition, Maritimes would modify one existing compressor station and four existing meter stations in Maine and Massachusetts.

with six alternative sites. Several of these alternative sites were developed as the result of public response to our NOI and January 12, 2006 scoping meeting in Methuen, Massachusetts. The locations of the seven potential sites for the Massachusetts Compressor Station are shown in the enclosure.

We are conducting this public meeting to allow you the opportunity to express your environmental concerns about the seven potential sites for the Massachusetts Compressor Station. We will use these comments to help us analyze these seven potential locations for the Massachusetts Compressor Station in our Draft Environmental Impact Statement (EIS). Comments may be submitted in written form or verbally at the meeting. Further details on how to submit written comments are provided in this notice. In lieu of sending written comments, we invite you to attend the following public comment meeting.

Date and Time: Wednesday, April 5, 2006, 7 p.m. to 10 p.m. (EST).

Location: Haverhill City Hall, 4 Summer Street, Haverhill, Massachusetts, Phone: 978–374–2300.

You can make a difference by providing us with your specific environmental comments or concerns on the location of the Massachusetts Compressor Station. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the construction and operation of the proposed Massachusetts Compressor Station and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. We request that you file your comments as soon as possible, but no later than April 14, 2006. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to:Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 2, DG2E.
- Reference Docket No. PF05–17–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

The public meeting in Haverhill is designed to provide another opportunity to offer comments on the proposed Massachusetts Compressor Station. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be generated so that your comments will be accurately recorded.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4237 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–18–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

March 17, 2006.

The Federal Energy Regulatory Commission is convening a technical conference regarding the Midwest Independent Transmission System Operator Inc.'s proposed cost allocation policy, as it pertains to the degree of regional cost sharing for reliability projects at 345 kV and above, pursuant to the Commission Order issued on February 3, 2006.[1] The conference will be held on Friday, April 21, 2006 at 10 a.m. (EST) at the Federal Energy Regulatory Commission, Commission Meeting Room, 888 First Street, NE., Washington, DC 20426. A separate notice will be issued by the Commission to announce the final agenda of the conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY); or send a Fax to 202–208–2106 with the required accommodations.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact either Patrick Clarey at (317) 249–5937 or at *patrick.clarey@ferc.gov* or Eli Massey at (202) 502–8494 or at *eli.massey@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–4235 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Midwest Independent Transmission System Operator Inc.,* 114 FERC ¶ 61,106 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–2–000]

Assessment of Demand Response Resources

March 15, 2006.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Notice of issuance of voluntary survey.

SUMMARY: Pursuant to the Energy Policy Act of 2005 (EPAct 2005) section 1252(e)(3),[1] the Federal Energy Regulatory Commission (Commission) is required to prepare a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. To gather information for this report, a voluntary survey will be issued to 3,372 respondents to gather information on advanced metering (AMI) and demand response (DR) and time-based rate programs.

DATES: E-Mails and letters will be sent to the survey respondents by March 16, 2006. Responses should be made by April 12, 2006. Extensions will be granted on a case-by-case basis by contacting the *Demand Response Team* (anytime).

[1] Energy Policy Act of 2005, Pub. L. No. 109–58, section 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)).

FOR FURTHER INFORMATION CONTACT: David Kathan, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6404, E-mail: *Demand Response Team.*

SUPPLEMENTARY INFORMATION:

Notice of Issuance of Voluntary Survey on Advanced Metering and Demand Response Programs

1. Take notice that a survey of demand response (DR) and time-based rate programs/tariffs, and advanced metering infrastructure (AMI) is being issued to gather information to assist in the preparation of a report for Congress that assesses various aspects of demand response in the United States as specified in the Energy Policy Act of 2005 (EPAct 2005) section 1252(e)(3).[2] The survey will be sent to 3,372 electric power businesses and organizations who directly serve end-use customers. E-mails will be sent to each respondent along with follow-up letters. Reponses would be appreciated by April 12, 2006 to provide sufficient time to process and analyze the results by August 8, 2006, the date set by Congress for submission of the report.

2. This survey is the first nationwide effort to gather information on the dispersion of advanced metering and demand response programs. Industry cooperation is important for us to obtain as accurate and up-to-date information as possible to respond to Congress, as well as to provide information to states and other market participants. We, therefore, strongly encourage all potential survey respondents to complete the survey.

3. Towards this end, the survey has been designed to be as user-friendly as possible. To ease the burden of responding, the survey will be conducted using the Internet and will allow respondents to enter information via a Web-survey instrument. The survey will use three Web-based forms that collect general corporate information, inventory AMI at the utility, and inventory DR and time-based programs/tariffs.[3] The survey has been divided into three sections to allow different people within an organization to enter information on AMI, DR, and time-based rate programs and/or tariffs.

I. Background

4. Section 1252(e)(3) of EPAct 2005 requires the Commission to draft and publish a report, by appropriate region, that assesses DR resources, including those available from all consumer classes. Specifically, EPAct 2005 requires that the Commission identify and review:

(A) Saturation and penetration rates of advanced meters and communications technologies, devices and systems;

(B) Existing demand response programs and time-based rate programs;

(C) The annual resource contribution of demand resources;

(D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes;

(E) Steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and

(F) Regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

5. On November 3, 2005, a notice was issued requesting comments on proposed survey questions. A survey was proposed because adequate information on this subject is not collected by other sources. Twenty-nine comments were filed on the draft survey.

II. Discussion

6. We appreciate all the useful comments submitted on the survey questions. Within the limits of the available survey instrument, we have made revisions to reduce the burden in responding and to ensure the information is more accurate. In certain cases, we did not make suggested changes because more detailed information is needed to respond to specific items in the EPAct or to provide useful data. We trust that with the changes that have been made, the survey should not be onerous to complete, and we encourage all potential respondents to complete the survey so that we can obtain the most precise information possible.

7. The following summarizes the major changes to the survey and addresses the concerns expressed by commenters:

(1) New survey software is being used to make navigation among sections of the survey faster and easier.

(2) To make entering information simpler, the survey asks all respondents to enter general company information only once, and provides for the entry of company name and utility identification number to allow data linkages among data from all survey parts.

(3) The demand response and time-based rate program sections of the survey also have been combined, as suggested by commenters.

(4) The survey is going to regulated and non-regulated entities that own or operate end-use meters that are used for billing purposes and to entities that offer DR programs and/or time-based rates. In response to commenters, the latter now includes third-party curtailment service providers and ISOs/RTOs.

(5) In the interest of reducing possible confusion and to ensure more direct comparison, the commercial/industrial (C/I) customer definition used in the draft surveys has been revised. The final survey asks respondents to report their data into five categories: Residential, Commercial, Industrial, Transportation, and Other. These categories are relatively standard and with the exception of the ''Other'' category are identical to the categories used by the Energy Information Administration (EIA) in their form EIA–861, ''Annual Electric Power Industry Report.''

(6) The survey has been revised to eliminate the need for state level reporting on demand response and time-based rate programs/tariffs, as suggested by commenters. The final survey will allow respondents the flexibility to list demand response and time-based rate programs/tariffs that cross state boundaries.

(7) State level reporting will be requested on AMI information. We received comments from state commissions that state level data will be important for their consideration of smart metering required in EPAct section 1252. We trust that larger, regional companies will be able to easily report or estimate their AMI data by state.

(8) In response to requests in comments, the final demand response and time-based rates/tariffs section of the survey adds questions with regards to expected impact on energy usage, and the total maximum demand of participating customers. This information will provide useful information for determining the size and impact of demand response and time-based rate programs/tariffs.

(9) The final version of the AMI section of the survey continues to request data on the number of installed meters by frequency of measurement

[2] Energy Policy Act of 2005, Pub. L. No. 109–58, § 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)).

[3] The final versions of the corporate information, AMI, and demand-response and time-based rate programs/tariffs surveys can be accessed at: *http://www.ferc.gov/industries/electric/indus-act/dem-resp/gen-inf-sec.pdf, http://www.ferc.gov/✖industries/electric/indus-act/dem-resp/ami-sec.pdf,* and *http://www.ferc.gov/industries/electric/indus-act/dem-resp/drs-tbr.pdf.*

and frequency of data retrieval, and does not provide a specific definition for advanced metering. Although several parties requested a specific definition of advanced metering, there was a lack of consensus in the comments on the definition on advanced metering. Consequently, Commission staff determined that a broader data collection would be useful and appropriate to support the development of the final report and to support future policy deliberations.

(10) A glossary of terms and list of acronyms have been added and instructions for completing the survey have been significantly revised. When respondents access the survey on the Web site, they will be able to access and download the glossary of terms, a list of acronyms used in the survey, and instructions for each section of the survey. Respondents will also be able to download a copy of the entire survey instrument to help them organize their collection of the data and to help them complete the Web survey online as quickly as possible.

(11) The final survey incorporates many of the general suggestions commenters made, such as providing response space throughout to give respondents the opportunity to provide more information on the purpose and applicability of the programs. Commission staff wants to receive information on all programs, regardless of size and encourages potential respondents to take the survey even if they have only one program.

(12) The Commission is very interested in achieving as high a response rate as possible to this survey. The Commission is aware that some potential respondents do not have email and/or Internet access. These respondents will receive a letter informing them of the survey and providing them with hard copies of all the information they need to participate in this important national study.

(13) In response to comments related to security, there are a number of steps that will safeguard both the data collection and the data itself. First, Commission staff has assigned each respondent a utility identification and a password. This identifying data is required for completion of each section of the survey and will allow automated compilation and verification of validity of the survey data. The survey instrument itself is powered by Snap Survey Software. This is a tool the survey contractor has used extensively without ever encountering a security breach. Respondents completing the survey via FERC–727 and FERC–728 will be working on the survey contractor's Web site. The survey contractor's server hosting company uses network intrusion detection in a signature based model. They also use a state based layer 3 firewall with notification and alerting of abnormal events. The administrator at the contractor's server hosting company is a Certified Information Systems Security Professional. The survey contractor, who has extensive general expertise and knowledge about demand response programs across the country, will also be conducting validity checks on the data as the forms are completed and after all the data is collected to ensure early and timely detection of unusual data entries.

(14) The Commission received a comment from one large company indicating that based on a preliminary ''dry run'' of activities necessary to complete the draft FERC–727, the company did not believe that the Commission's estimate of reporting burden associated with completion of this survey accurately reflected the actual effort that will be required to complete the survey. The commenter indicated that the data collection and input required for it to complete FERC–727 would require approximately four hours. Although the Commission burden estimate for this information collection was questioned by only one commenter, Commission staff is revising its burden estimate for FERC–727 from one hour to four hours for two primary reasons. First, as described previously, a number of commenters asked for FERC–727 to collect data on various additional aspects of demand response and time-based rate programs/tariffs to ensure the meaningfulness of the data and the survey has been revised to accommodate these reasonable requests. Second, Commission staff anticipates that many of the largest potential respondents to the survey (such as Pacific Gas and Electric) will also be the largest contributors to total national demand response. Commission staff thereby revises its burden estimate for FERC–727 and predicts that it will take all respondents 1 hour or less to enter the data they have compiled from their businesses into the Web-based form but that many will need as many as 3 non-continuous hours to collect data for a number of the questions being asked in the final FERC–727. The total estimated reporting burden for FERC–727 and FERC–728 is estimated to be five hours maximum. The Commission expects that the majority of the respondents will take significantly less time to complete the survey because of the smaller size and less extensiveness of their programs. Other details regarding this data collection are as follows.

III. Data Collection Information

8. Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[4] Accordingly, pursuant to OMB regulations, notice is given to the public that OMB has reviewed and approved the final survey under section 3507(d) of the Paperwork Reduction Act of 1995.[5]

9. The OMB has approved the Commission's burden estimate and the calculation of the information collection costs and determined that the survey meets its information collection requirements. The OMB authorization numbers for collecting this information via FERC–727 and FERC–728 are displayed on the forms themselves and shown below.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–727, Demand Response and Time Based Rate Programs Survey, OMB No. 1902–0214	3,372	1	4	13,488
FERC–728, Advanced Metering Survey, OMB No. 1902–0213	3,372	1	1	3,372
Totals	3,372	2	5	16,860

[4] 5 CFR 1320.10 (2005).

[5] 44 U.S.C. 3507(d) (2005).

10. *Total Annual Hours for Collection:* The reporting burden for this survey is estimated at 16,860 hours.

11. *Information Collection Costs:* The surveyed organizations collect all the information requested in FERC–727 and FERC–728 as part of their customary and usual business practices. There were no comments on the cost of responding to FERC–727 and FERC–728. Therefore, the Commission concludes that its calculation of the average annualized cost for all respondents being projected to be $910,440 (16,860 hours × $54 per hour) is accurate.

12. *Title:* FERC–727, Demand Response and Time-Based Rate Programs Survey and FERC–728, Advanced Metering Infrastructure Survey.

13. *Action:* Proposed Information Collection. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

14. *Respondents:* Business or other for profit, publicly-owned utilities, and electric cooperatives, RTOs/ISOs.

15. *Frequency of Responses:* On occasion.

16. *Necessity of Information:* On August 8, 2005, Congress enacted EPAct 2005. Section 1252 (e)(3) of the EPAct 2005 requires the Commission to draft and publish a report, by appropriate region, that assesses demand response resources, including those available from all consumer classes. Commission staff has reviewed public information to determine the availability of saturation and penetration data on advanced metering with the regional specificity required by the EPAct 2005. The review included an assessment of the EIA–861, which collects aggregate information on energy efficiency and load management. The EIA–861 does not include any information on advanced metering. Moreover, there are no publicly available saturation and penetration data on advanced metering at the level required by the EPAct 2005. The Commission is dedicated to establishing clear market rules to govern electric markets. The information collected through this survey will assist the Commission in carrying out its goal of developing robust and efficient energy markets.

17. *Internal Review:* Internal review at the Commission shows that there is specific, objective support for the burden estimates associated with the information requirements. The Commission will review the data resulting from the survey to ensure that the survey results meet the congressional requirements of the report on DR in EPAct 2005. This conforms to the Commission's plan for efficient information collection, communication, and management within the electric industry.

18. Interested persons may obtain information on the reporting requirements of the survey by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415, fax: 202–273–0873, e-mail: *Michael.miller@ferc.gov*). To submit comments concerning the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the contact listed above and to the Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), fax: 202–395–7285, e-mail: *oira_submission@omb.eop.gov*).

19. The ''public protection'' provision of the Paperwork Reduction Act[6] requires each agency to display a currently valid OMB control number and to inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection. This provision has two legal effects: (1) It creates a legal responsibility for the agency; and (2) it provides an affirmative legal defense for respondents if the information collection is imposed on respondents by the Commission through regulation or administrative means in order to satisfy a legal authority or responsibility of the Commission. If the Commission should fail to display an OMB control number, then it is the Commission not the respondent who is in violation of the law. ''Display'' is defined as publishing the OMB control number in regulations, guidelines or other issuances in the **Federal Register** (for example, in the preamble or regulatory text for the final rule containing the information collection).[7] Therefore, the Commission may not conduct or sponsor, and a person is not required to respond to a collection of information unless the information collection displays a valid OMB control number.

[6] 44 U.S.C. 3512 (2000); 5 CFR 1320.5(b) (2005); 5 CFR 1320.6(a) (2005).

[7] *See* 1 CFR 21.35 (2005); 5 CFR 1320.3(f)(3) (2005).

IV. Document Availability

20. 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.

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

22. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4230 Filed 3–23–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6673–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050510, ERP No. D–FHW–D40334–VA, I–81 Corridor Improvement Study in Virginia, Transportation Improvements from

the Tennessee Border to the West Virginia Border, (Tier 1), Several Counties, VA and WV.

Summary: EPA expressed environmental concerns about the proposed project arising from the reliability of projecting traffic data to the year 2035, and the lack of data in the Tier 1 document to support the intended Tier 1 decisions. Rating EC2.

EIS No. 20050511, ERP No. D–DOE–D09800–PA, Gilberton Coal-to-Clean Fuels and Power Project, Construction and Operation a New Demonstration Plant, Schuylkill County, PA.

Summary: EPA expressed environmental concerns about the uncertainty and lack of information related to cumulative impacts of the various emissions associated with the facility, fugitive dust associated with construction activities, and a need for greater emphasis on public outreach and community involvement efforts. Rating EC2.

EIS No. 20060010, ERP No. D–IBR–G31003–NM, Long-Term Miscellaneous Purposes Contract Abstract, To Use Carlsbad Project Water for Purposes Other than Irrigation, Eddy County, NM.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060023, ERP No. D–IBR–G39046–00, Upper Rio Grande Basin Water Operations Review, To Develop an Integrated Plan for Water Operations at the Existing Facilities, NM, CO and TX.

Summary: EPA does not object to the selected alternative. Rating LO.

EIS No. 20060028, ERP No. D–DOD–G11046–NM, Programmatic—Defense Threat Reduction Agency (DTRA) Activities on White Sands Missile Range (WSMR), Implementation, NM.

Summary: EPA does not object to the selected alternative. Rating LO.

Final EISs

EIS No. 20060040, ERP No. F–FHW–L40203–AK, Juneau Access Transportation Project, Improvements in the Lynn Canal/Taiya Inlet Corridor between Juneau and Haines/Skagway, Special-Use-Permit and COE Section 10 and 404 Permits, Tongass National Forest, Klondike Gold Rush National Historic Park, Haines States Forest, City and Borough of Juneau, Haines Borough, Cities Haines and Skagway, AK.

Summary: EPA has environmental concerns about the new preferred Alternative 2B due to uncertainty about whether it represents the Least Environmentally Damaging Practicable Alternative (LEDPA) based on Section 404(b)(1) Guidelines. EPA also recommends including additional compensatory mitigation for unavoidable impacts to old growth habitat areas.

EIS No. 20050417, ERP No. FS–COE–D35057–MD, Poplar Island Environmental Restoration Project, Habitat Restoration and Dredged Material Capacity, Chesapeake Bay, Talbot County, MD.

Summary: EPA's comments on the Draft EIS were adequately addressed; we have no objections to the proposed action.

Dated: March 21, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–4300 Filed 3–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6673–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 3/13/2006 through 3/17/2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060083, Draft EIS, AFS, AZ, Jacob Ryan Vegetation Management Project, Implementation, Kaibab National Forest, North Kaibab Ranger District, Coconino County, AZ, Comment Period Ends: 05/08/2006, Contact: Jonathan M. Beck 928–643–8143.

This document is available on the Internet at: *http://www.fs.fed.us/r3/kai/projects/jacob_ryan/deis/index.html.*

EIS No. 20060084, Draft EIS, DOA, CA, Commercial Park Stock Permit Reissuance for the Sierra National Forest and Trail Management Plan for the Dinkey Lakes Wilderness, Application Reissuance Special-Use-Permit, Mariposa, Madera and Fresno Counties, CA, Comment Period Ends: 05/15/2006, Contact: Kim Sorini-Wilson 559–855–5355, Ext. 3328.

EIS No. 20060085, Draft EIS, NRS, MO, East Locust Creek Watershed Revised Plan, Installation of Multiple-Purpose Reservoir, Flood Prevention and Watershed Protection, Sullivan and Putnam Counties, MO, Comment Period Ends: 05/08/2006, Contact: Sue Teson 573–876–0912.

EIS No. 20060086, Draft EIS, BLM, WY, Pit 14 Coal Lease-by-Application Project, Black Butte Coal Mine, Surface Mining Operations, Federal Coal Lease Application WYW160394, Sweetwater County, WY, Comment Period Ends: 05/22/2006, Contact: Teri Deakins 307–352–0211.

EIS No. 20060087, Final EIS, AFS, IL, Shawnee National Forest Trails Designation Project, Phase 1, Designation, Construction and Maintenance for Trail System within Four Watershed: Eagle Creek, Big Grand Pierre Creek, Lusk Creek and Upper Bay Creek, Hidden Springs Ranger District, Gallatin, Hardin, Johnson, Pope and Saline Counties, IL, Wait Period Ends: 04/24/2006, Contact: Matthew Lechner 618–253–7114.

This document is available on the Internet at: *http://www.fs.fed.us/r9/forests/shawnee/projects/projects/eis/2005/trails/final/trails-FEIS.pdf.*

EIS No. 20060088, Draft EIS, FTA, CO, Denver Union Station (DUS) Project, Transportation Improvement, Multimodal Transportation Center for the Metro Denver Region, Funding and NPDES Permit, City and County Denver, CO, Comment Period Ends: 05/08/2006, Contact: David Beckhouse 720–963–3306.

EIS No. 20060089, Draft Supplement, AFS, ID, West Gold Creek Project, Updated Information, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID, Comment Period Ends: 05/08/2006, Contact: A.J. Helgenberg 208–265–6643.

This document is available on the Internet at: *http://www.fs.fed.us/ipnf/eco/manage/nepa/sptnepa/wgold/wg_dseis_ document.pdf.*

EIS No. 20060090, Draft EIS, AFS, WI, Fishbone Project Area, Vegetation and Road Management, Implementation, Washburn Ranger District, Chequamegon-Nicolet National Forest, Bayfield County, WI, Comment Period Ends: 05/08/2006, Contact: Cristi Corey-Luse 715–373–2667 Ext. 235.

EIS No. 20060091, Draft EIS, AFS, CA, Phoenix Project Area, Treat Poor Forest Health, High Fire Hazard Condition, Develop a Network of Defensible Fuel Profile Zones (DFPZs), and Restore Aspen Stand, Sierraville Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA, Comment Period Ends: 5/8/2006, Contact: Jeff Leach 530–994–3401.

EIS No. 20060092, Final EIS, AFS, MT, Frenchtown Face Ecosystem Restoration Project, Maintenance and Improvement of Forest Health, Risk Reduction of Damage Insects and Disease, Lolo National Forest, Ninemile Ranger District, Missoula, MT, Wait Period Ends: 4/24/2006, Contact: Gary Edson 406–626–5201.

EIS No. 20060093, Draft EIS, AFS, CA, Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance, Implementation, Special-Use-Permit to Twelve Pack Station and Two Outfitter/Guides, Inyo National Forest, CA, Comment Period Ends: 5/15/2006, Contact: Rich Hatfield 760–873–2452.

EIS No. 20060094, Final EIS, AFS, IN, Hoosier National Forest Land and Resource Management Plan, Implementation, Brown, Crawford, Dubois, Jackson, Lawrence, Martin, Orange, Perry Counties, IN, Wait Period Ends: 04/24/2006, Contact: Judi Perez 812–277–3593.

EIS No. 20060095, Final EIS, AFS, WA, Growden Dam Sherman Creek Restoration Project, and Forest Plan Amendment #28, Implementation, Colville National Forest, Ferry County, WA, Wait Period Ends: 4/24/2006, Contact: Karen Honeycutt 509–738–7734.

EIS No. 20060096, Draft EIS, BOP, NH, Berlin, Coos County, Proposed Federal Correctional Institution, Construction and Operation, City of Berlin, Coos County, NH, Comment Period Ends: 05/08/2006, Contact: Pamela J. Chandler 202–514–6470.

EIS No. 20060097, Final EIS, AFS, CO, Dry Fork Federal Coal Lease-by-Application (COC–67232), Leasing Additional Federal Coal Lands for Underground Coal Resource, Special-Use-Permits and U.S. Army COE Section 404 Permit, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Wait Period Ends: 4/24/2006, Contact: Liane Mattson 970–874–6697.

Amended Notices

EIS No. 20060024, Draft Supplement, AFS, WI, McCaslin Project, Vegetation Management Activities that are Consistent with Direction in the Nicolet Forest Plan, New Information to Address Inadequate Disclosure of the Cumulative Effect Analysis for Six Animal and Eight Plant Species, Lakewood/Lasna District, Chequamegaon-Nicolet National Forest, Oconto and Forest Counties, WI, Comment Period Ends: 03/27/2006, Contact: Brian Quinn 715–762–5176.

Revision to FR Notice Published 1/27/2006: Comment Period.

Extended from 3/13/2006 to 3/27/2006.

Dated: March 21, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–4299 Filed 3–23–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved By Office of Management and Budget

March 16, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1047.

OMB Approval Date: 02/21/2006.

Expiration Date: 02/28/2009.

Title: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, CG Docket No. 03–123, FCC 05–203.

Form No.: None.

Estimated Annual Burden: 677 responses; 2 to 5 hours per response; 2,554 total annually hourly burden.

Needs and Uses: On December 12, 2005, the Commission released a Report and Order and Order on Reconsideration, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, FCC 05–203, creating a fourth method for some TRS providers to become certified as eligible to receive compensation from the Interstate Telecommunications Relay Service (TRS) Fund. The Report and Order and Order on Reconsideration amends the TRS regulations to permit common carriers seeking to offer Video Relay Service (VRS) and Internet Protocol (IP) Relay Service to seek certification as an eligible TRS provider, eligible to receive reimbursement from the Interstate TRS Fund directly from the Commission. The information collection requirements include the following: (A) 47 CFR 64.605(a)(2) common carriers seeking to offer VRS and IP Relay service and receive compensation from the Interstate TRS Fund, independent of a certified state program or a common carrier offering TRS, may seek certification from the Commission by providing documentation detailing: (1) A description of the forms of TRS to be provided, (2) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, (3) a description of the provider's procedures for ensuring ongoing compliance with all applicable TRS rules, (4) a description of the provider's complaint procedures, (5) a narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards, (6) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards, (7) demonstration of status as common carrier, and (8) a statement that the provider will file annual compliance reports demonstrating continued compliance with the rules; (B) 47 CFR 64.605(c)(2) a VRS or IP Relay provider may apply for renewal of its certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in 47 CFR 64.605(a)(2); (C) 47 CFR 64.605(e)(2) a certified VRS or IP Relay provider must submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified VRS or IP Relay provider may not be in compliance with the minimum standards and the Commission requests such information; (D) 47 CFR 64.605(f)(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change; and (E) 47 CFR 64.605(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. The information collection requirements also include those information

collection requirements contained in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Speech Disabilities, 2003 Report and Order and Notice of Proposed Rulemaking*, which were previously approved by OMB on January 27, 2004, and adjustments made to the previous submission pursuant to the new census data.

OMB Control No.: 3060–1053.

OMB Approval Date: 03/07/2006.

Expiration Date: 03/31/2009.

Title: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Two-Line Captioned Telephone Order, CC Docket No. 98–67 and CG Docket No. 03–123, FCC 05–141.

Form No.: None.

Estimated Annual Burden: 6 responses; 8 hours per response; 64 total annually hourly burden.

Needs and Uses: On August 1, 2003, the Commission released the *Declaratory Ruling*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190. In the *Declaratory Ruling*, the Commission clarified that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards does not apply to one-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604(a)(1) and (a)(3) of the Commission's rules, which contained information collection requirements under the PRA became effective on March 26, 2004.

On July 19, 2005, the Commission released a subsequent *Order*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67 and CG Docket No. 03–123, FCC 05–141, that clarified two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Interstate TRS Fund. Also, the Commission clarified that certain TRS mandatory minimum standards do not apply to two-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules, for providers who offers two-line captioned VCO service. This clarification increased the number of providers who will be providing one-line and two-line captioned VCO services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–4313 Filed 3–23–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—March 29, 2006.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Docket No. 99–16—Carolina Marine Handling, Inc. v. South Carolina State Ports Authority, Charleston Naval Complex Redevelopment Authority, Charleston International Projects, Inc. and Charleston International Ports, LLC.

2. Docket No. 02–04—Anchor Shipping Co. v. Alianca Navegacao E Logistica Ltda.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 06–2906 Filed 3–22–06; 10:29 am]

BILLING CODE 6730–01–M

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 April 7, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Stumpf Family Control Group (consisting of Kenneth W. Stumpf, Evelyn L. Stumpf, Gary A. Stumpf, Cheri A. Riebeling, Jay W. Stumpf, Jane L. Mener, and Kurt D. Stumpf), all of Columbia, Illinois; to acquire additional voting shares of Columbia Bancshares, Inc., Columbia, Illinois, and thereby indirectly acquire additional voting shares of Columbia National Bank, Columbia, Illinois.

Board of Governors of the Federal Reserve System, March 20, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–4243 Filed 3–23–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Chicopee Bancorp, Inc., Chicopee, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Chicopee Savings Bank, Chicopee, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Centra Financial Holdings, Inc., Morgantown, West Virginia; to acquire up to 100 percent of the voting shares of Smithfield State Bank of Smithfield, Pennsylvania, Smithfield, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. South Georgia Bank Holding Company, Omega, Georgia; to merge with Community National Bancorporation, and thereby indirectly acquire voting shares of Community National Bank, both of Ashburn, Georgia.

2. Southwest Capital Holdings, Inc. Fort Myers, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Capital Bank, National Association, Fort Myers, Florida.

D. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Forstrom Bancorporation Inc., Clara City, Minnesota; to acquire 100 percent of the voting shares of Yellow Medicine Bancshares, Inc., and thereby indirectly acquire voting shares of Yellow Medicine County Bank, both of Granite Falls, Minnesota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FC Holdings, Inc., Houston, Texas; to merge with Texas National Bancshares, Inc., Tomball, Texas, and thereby indirectly acquire voting shares of Tomball Delaware Corporation, Wilmington, Delaware, and Texas National Bank, Tomball, Texas.

2. Grupo Financiero Banorte, S.A., Monterrey, Nuvevo Leon, Mexico; Banco Mercantil del Norte, S.A. Institucion de Banca Multipile, Grupo Financiero Banorte, Monterrey Nuvevo Leon, Mexico; and Banorte USA Corporation, Wilmington, Delaware; to become bank holding companies by acquiring 70 percent of the voting shares of INB Financial Corporation, McAllen, Texas, and indirectly, INB Delaware Corporation, Wilmington, Delaware, and Inter National Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, March 20, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–4242 Filed 3–23–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Delegation of Authority To Respond To Requests From Costa Rica's Ministry of Economy, Industry, and Commerce

AGENCY: Federal Trade Commission.

ACTION: Delegation of Authority.

SUMMARY: The Commission has delegated authority to the Associate Director for International Consumer Protection to respond to disclosure and other requests from Costa Rica's Ministry of Economy, Industry, and Commerce (MEIC) pursuant to a memorandum of understanding with the Commission.

DATES: Effective March 9, 2006.

FOR FURTHER INFORMATION CONTACT: Pablo Zylberglait, Legal Advisor for International Consumer Protection, International Division of Consumer Protection, 202 326–3260, *pzylberglait@ftc.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for International Consumer Protection the authority to respond to disclosure and other requests from Costa Rica's MEIC pursuant to a memorandum of understanding with the Commission about consumer protection information sharing and enforcement cooperation. This delegated authority does not apply to competition-related investigations. When exercising its authority under this delegation, staff may only disclose information regarding consumer protection matters involving Costa Rica, and will require assurances of confidentiality from MEIC. Disclosures shall be made only to the extent consistent with current limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–4213 Filed 3–23–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific 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:

Hiwot A. Woreta, Duke University Medical Center: Based on the report of an inquiry into admitted fabrication of data conducted by the Duke University Medical Center (DUMC) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Hiwot A. Woreta, former medical student, DUMC, engaged in research misconduct while supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grant P30 DK034987.

Specifically, PHS found that Ms. Woreta engaged in research misconduct by fabricating data included in Figure 2 of her third year Medical School Thesis at DUMC. These data were also included in a poster presented during the Alpha Omega Alpha Honor Society symposium in May 2004.

Ms. Woreta has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on February 24, 2006:

(1) To exclude herself 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 consultant; and

(2) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or which uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's

duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution. Respondent agreed to ensure that a copy of the supervisory plan is also submitted to ORI by the institution. Respondent agreed that she will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI.

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. 06–2843 Filed 3–23–06; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Changes to the NIOSH–IREP Lung Cancer Risk Model Under the Energy Employees Occupational Illness Compensation Program Act of 2000

Authority: 42 CFR 81.12, 67 FR 22311–22312.

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice for public comment; change to a scientific element underlying the determination of probability of causation under the Energy Employees Occupational Illness Compensation Program Act of 2000.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) has changed a guideline for determining the probability of causation under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) for energy employees with cancers of the lung, trachea, or bronchus. The change affects only the NIOSH-Interactive RadioEpidemiological Program (IREP) cancer risk model termed ''Lung (162).'' The new guideline, which became effective on February 28, 2006, with the introduction of NIOSH–IREP Version 5.5, requires the use of both a National Institutes of Health (NIH)–IREP lung model implemented by NIH in 2003 and the original NIOSH–IREP lung model implemented by NIOSH in 2002. NIOSH–IREP Version 5.5 calculates separately the probability of causation produced under each model for each cancer of the lung, trachea, or bronchus. The result from the model that produces the higher probability of causation at the upper 99th percentile credibility limit is reported as the probability of causation result of record for the claim. NIOSH–IREP Version 5.5 also incorporates a bias correction factor for random errors in dosimetry for those energy workers who had not smoked cigarettes (''never smokers'') and who were exposed to radon. This correction was previously applied to smokers, but had been inadvertently omitted for never smokers. These changes may result in the Department of Labor (DOL) calculating higher probability of causation determinations for select cases of cancer of the lung, trachea, or bronchus among previously decided and current EEOICPA cancer claims. The changes cannot result in any lower probability of causation determinations. Although this change to the NIOSH–IREP lung cancer risk model took effect February 28, 2006, NIOSH will fully consider all comments received regarding this change and may reconsider this change or consider further revisions to the lung cancer risk model based on public comment.

DATES: NIOSH must receive public comments on this change on or before May 23, 2006.

ADDRESSES: Comments may be submitted by mail or e-mail. Mail comments concerning this change to Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Mailstop C–46, Cincinnati, OH 45226. Submit electronic comments, titled ''NIOSH–IREP Lung Cancer Model'', to *OCAS@CDC.GOV.*

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Mailstop C–46, Cincinnati, OH 45226, Telephone: (513) 533–6800 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Solicitation of Public Comments

NIOSH invites public comments on this change to the NIOSH–IREP lung cancer risk model. NIOSH will fully consider comments received regarding this change and, based on such comments, may reconsider this change or consider further revisions to the lung cancer risk model, as appropriate. Additional details regarding this change to NIOSH–IREP, including PDF copies of all relevant documents provided to the Advisory Board on Radiation and Worker Health, can be accessed via the NIOSH/OCAS ''Probability of Causation—NIOSH–IREP'' Web page at *http://www.cdc.gov/niosh/ocas/ocasirep.html.*

II. Summary of Changes to the Guidelines for Determining Probability of Causation for Cancers of the Lung, Trachea, or Bronchus as Effected in the February 28, 2006, Implementation of NIOSH–IREP Version 5.5

Under HHS regulations at 42 CFR part 81, NIOSH developed and maintains NIOSH–IREP. This computerized set of cancer risk models is used by DOL to calculate the statistical probability that the cancer or cancers of an energy employee covered under EEOICPA were at least as likely as not caused by exposure to ionizing radiation incurred by the employee while in the performance of duty for U.S. nuclear weapons programs.

HHS regulations also provide for NIOSH to add, modify, or replace cancer risk models as necessary on the basis of new evidence and/or improved scientific understanding. Accordingly, on February 28, 2006, NIOSH modified its cancer risk model ''Lung (162)'' to incorporate new evidence concerning the radiogenicity of lung cancer and its relationship with cigarette smoking and to make a minor technical correction concerning radon exposure.

NIOSH evaluated new interpretations of the interaction between cigarette smoking and ionizing radiation and the effects of age at exposure and age at diagnosis with respect to the development of cancers of the lung, trachea, or bronchus. In conjunction with this evaluation, NIOSH also reviewed a new lung cancer risk model implemented in 2003 by the National Cancer Institute for use in a separate version of IREP known as ''NIH–IREP'' and compared it to the model in NIOSH–IREP.

The NIH lung cancer risk model relies less on a multiplicative interaction than does the NIOSH model to account for the interaction between cigarette smoking and ionizing radiation in the development of lung cancer. The NIH model also adjusts risk for age at exposure and age at diagnosis, whereas the NIOSH model does not take into account these age-dependent factors. In terms of probability of causation, the NIH model is generally more favorable to smokers for some exposure profiles than the NIOSH model, whereas the NIOSH model is generally more favorable to nonsmokers for some exposure profiles. Other probability of causation calculation differences

between the models vary with the circumstances of each individual claim and are more difficult to generalize. In summary, however, the same inputs entered into NIH–IREP and the previous version of NIOSH–IREP for a cancer of the lung, trachea, or bronchus could produce different probabilities of causation for some exposure profiles.

The NIOSH review also included consideration of recommendations submitted by four internationally-recognized outside experts. The experts recruited by NIOSH were: David J. Brenner, PhD, Professor of Radiation Oncology and Public Health, Columbia University School of Public Health; Faith G. Davis, PhD, Professor of Epidemiology and Biostatistics, University of Illinois at Chicago, School of Public Health; David B. Richardson, PhD, Assistant Professor of Epidemiology, University of North Carolina School of Public Health; and Jonathan M. Samet, MD, MS, Professor and Chairman, Department of Epidemiology, Johns Hopkins University School of Public Health. Each expert reviewed the issue independently, considering the appropriateness of the NIOSH and NIH models and any alternatives to the use of these models. The only general consensus among all four reviewers was that none recommended the exclusive retention of the NIOSH lung model. Beyond this, there was a diversity of opinion as to how to properly characterize and model the interaction between cigarette smoking and ionizing radiation.

In accordance with the experts' opinions, NIOSH concluded that the current state of scientific knowledge does not support the exclusive use of either of the two IREP lung cancer risk models, and that the most reasonable option within the context of compensation was to reprogram NIOSH–IREP to run both the NIOSH and the NIH lung cancer risk models separately for each relevant EEOICPA case, and then to select the model that produces the higher probability of causation result for application to the case. The programming was accomplished and implemented on February 28, 2006, with the installation of NIOSH–IREP Version 5.5, which replaced NIOSH–IREP Version 5.4.

NIOSH–IREP Version 5.5 also incorporates a bias correction factor in the NIOSH lung model for random errors in dosimetry for ''never smokers'' who were exposed to radon. Due to a programming oversight, this correction had been inadvertently omitted for never smokers and was applied only to smokers in earlier versions of NIOSH–IREP. NIOSH–IREP Version 5.5 corrects this error.

The changes introduced in NIOSH–IREP Version 5.5 on February 28, 2006, pertain only to the NIOSH–IREP cancer risk model termed ''Lung (162)'' and apply only to cancers of the lung, trachea, or bronchus. NIOSH will review all relevant previously completed claims that have not been compensated to identify those for which the new guidelines are applicable, and will re-evaluate the claims using the new guidelines. NIOSH will also apply the new guidelines to all currently active claims and any future cases. Application of these new guidelines may result in DOL calculating higher probability of causation determinations for select lung, trachea, or bronchus cases among previously decided and current EEOICPA cancer claims. As noted above, the changes cannot result in any lower probability of causation determinations.

III. Summary of Recommendations of the Advisory Board on Radiation and Worker Health

Under 42 CFR 81.12, NIOSH is required to obtain the review of the Board before making changes to NIOSH–IREP that would have a substantial effect on probability of causation calculations. NIOSH notified the Advisory Board on Radiation and Worker Health (ABRWH) of its intent to re-evaluate the NIOSH–IREP lung cancer risk model and to review the NIH–IREP lung cancer risk model as a possible alternative model during a meeting of the Board on December 15, 2004. After the NIOSH review and evaluation was completed, NIOSH presented information describing and proposing the current NIOSH–IREP change to the Board, including a summary of the NIOSH evaluation and the expert reviews discussed above. The Board considered the change and voted unanimously to support it during the October 19, 2005, meeting of the Board in Knoxville, Tennessee. The motion to support the change included a provision that NIOSH should revisit the issue in approximately one year to determine if new evidence might warrant consideration of a single lung cancer risk model.

The Director, National Institute for Occupational Safety and Health (NIOSH), has been delegated the authority to sign **Federal Register** notices for CDC that pertain to NIOSH programmatic matters.

Dated: March 17, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–4314 Filed 3–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Centers for Agricultural Disease and Injury Research, Education and Prevention, Program Announcement Number 06–057

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers for Agricultural Disease and Injury Research, Education and Prevention, Program Announcement Number 06–057.

Times and Dates: 8 a.m.–5 p.m., May 1, 2006 (Closed).

8 a.m.–5 p.m., May 2, 2006 (Closed).

8 a.m.–5 p.m., May 3, 2006 (Closed).

8 a.m.–5 p.m., May 4, 2006 (Closed).

8 a.m.–5 p.m., May 5, 2006 (Closed).

Place: Residence Inn, 1456 Duke Street, Alexandria, VA 22314 telephone 703–548–5474.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Centers for Agricultural Disease and Injury Research, Education and Prevention, Program Announcement Number 06–057.

For Further Information Contact: Steve Olenchock, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, MS 1119, Morgantown, WV 26505, Telephone 304–285–6271.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 17, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–4266 Filed 3–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on Mine Escape Planning and Emergency Shelters

AGENCY: Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

ACTION: Notice of workshop.

SUMMARY: The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) are hosting a workshop to identify the major issues and concerns related to mine escape planning and emergency shelters in the mining industry, and share information with the mining community. The workshop will provide for an exchange of information among all segments of the mining community involved with mine emergency preparedness and will generate an agenda for research to improve technology for mine safety in these areas.

DATES: The workshop will be held on Tuesday, April 18, beginning at 8 a.m. and conclude by 5:30 p.m.

ADDRESSES: The workshop will be held at the National Academy of Sciences Auditorium, 2101 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffery H. Kravitz, MSHA, at 412–386–6923 or Dr. Gerald L. Finfinger, NIOSH, at 412–386–6550.

SUPPLEMENTARY INFORMATION:

MSHA and NIOSH will moderate a day-long workshop on mine escape planning and emergency shelters.

Location and Transportation

Participants should plan to arrive by Metro or taxi and enter the building at 2100 ''C'' Street, NW. A shuttle leaves the Foggy Bottom Metro station at 7:15 a.m. and runs directly to the National Academy building. The National Academy has a cafeteria in the building.

Attendance and Registration

The workshop is open to all interested parties. In addition to state and federal government representatives, we expect that mine operators, labor representatives, and manufacturers will be interested in this workshop. We encourage manufacturers and distributors of emergency shelters, self-rescue devices, mine rescue apparatus, and other equipment that can aid in mine escape, evacuation, rescue, and recovery operations to attend this workshop.

You can register at the workshop or you can pre-register by contacting one of the following persons:

- Donna Opfer (NIOSH) at 412–386–6564, *Dopfer@cdc.com;*
- John Sporrer (NIOSH) at 412–386–6435, *JSporrer@cdc.com*; or
- Yvonne Quinn (MSHA) at 202–693–9440, *quinn.yvonne@dol.gov.*

We will include all participants on the registration list and make it available at the workshop.

Scheduled Presentations

Representatives from MSHA and NIOSH will be discussing issues involving mine escape planning, with an emphasis on evacuation as a first priority, and emergency shelters. Invited international speakers include representatives from Canada, Germany, South Africa, and Australia. MSHA and NIOSH will provide participants an opportunity to ask questions and submit written comments and information.

Tentative Agenda

You can find workshop information, including a tentative agenda, on the NIOSH and MSHA Internet sites, *http://www.cdc.gov/niosh* and *http://www.msha.gov*. Topics addressing mine escape planning will include the philosophy of escape planning, a recent history of mine escapes, warning systems, and the use of self-rescue devices and lifelines. Tentative topics addressing emergency shelters include the history of the use of emergency shelters, how mine design has changed since the 1980s, shelter placement in the mine, configuration and construction, life support and instrumentation, communication issues, equipment and supplies, and psychological and training issues.

Workshop Proceedings

MSHA and NIOSH will compile the workshop presentations, which are in PowerPoint'' format, audiotape the workshop, and make a transcript of the proceedings. The PowerPoint® presentations and workshop transcript will be made available on the NIOSH and MSHA Internet sites, *http://www.cdc.gov/niosh* and *http://www.msha.gov*. At a later date, MSHA and NIOSH will summarize the information presented by participants and prepare a joint report.

Dated: March 20, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

Dated: March 21, 2006.

Dr. John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 06–2905 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10137, CMS–10080, CMS–R–296, CMS–1763, and CMS–10116]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD) Plans; Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for PACE Organization to Offer Qualified Prescription Drug

Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application to Offer Prescription Drug Coverage in a New Region; *Use:* Coverage for the prescription drug benefit will be provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, Employer Group Waiver Plans (EGWP) and PACE plans may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application; *Form Number:* CMS–10137 (OMB#: 0938–0936); *Frequency:* Reporting—Other—depending on program areas and data requirements; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal government; *Number of Respondents:* 101; *Total Annual Responses:* 101; *Total Annual Hours:* 3,828.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Publications Use Study; *Use:* The Balanced Budget Act (BBA) of 1997 increased the number and type of health insurance options available to Medicare beneficiaries and implemented new preventative health care benefits. The BBA also gave CMS a greater responsibility to help Medicare beneficiaries better understand these increased health care options and benefits. This research is designed to strengthen the information dissemination efforts by CMS to meet beneficiaries' needs. The current study expands on previous methodology to include surveys of not only print-based publications but of Web-based publications as well. CMS is mandated to provide a range of information about Medicare health care options, benefits, rights and regulations. This research will evaluate how well CMS is currently meeting this mandate; *Form Number:* CMS–10080 (OMB#: 0938–0892); *Frequency:* Recordkeeping and Reporting: Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 3880; *Total Annual Responses:* 3880; *Total Annual Hours:* 1,356.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Advance Beneficiary Notice (HHABN) and Supporting Regulations in 42 CFR 411.404 and 484.10(a) and (e); *Use:* Home Health Agencies (HHAs) are required to provide written notice to Medicare beneficiaries in advance of initiating, terminating or reducing beneficiary service. The notice is designed to ensure that beneficiaries receive complete and useful information to enable them to make informed consumer decisions. HHAs must now issue HHABNs in a broader set of circumstances in conjunction with their responsibilities under the home health Conditions of Participation (COPs) consistent with U.S. Court of Appeals (2nd Circuit) in the *Lutwin* v. *Thompson* court decision. The notice must be issued timely and provide clear and accurate information about the specified services which may no longer be covered by Medicare, including the reason(s) that Medicare denied payment for those services. *Form Number:* CMS–R_296 (OMB#: 0938–0781); *Frequency:* Recordkeeping, Third party disclosure and Reporting: On occasion, Other: As needed; *Affected Public:* Individuals or households, Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 6928; *Total Annual Responses:* 216,000; *Total Annual Hours:* 21,600.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and/or Supplementary Medical Insurance and Supporting Regulations in 42 CFR 406.28 & 407.27; *Use:* Under 42 CFR sections 406.28(a) and 407.27(c) a Medicare beneficiary, wishing to voluntarily terminate enrollment in Medicare Supplementary Medical Insurance and/or Premium-Hospital Insurance can file a written request with CMS or the Social Security Administration. The form, Request for Termination of Premium Hospital and/or Supplementary Medical Insurance, was developed to comply with these requirements. *Form Number:* CMS–1763 (OMB#: 0938–0025); *Frequency:* Reporting: Other: One Time Only; *Affected Public:* Individuals or households, Federal, State, Local or Tribal Government; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles (CMS–3017–IFC); *Use:* CMS–3017–IFC (Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles) provides further guidance with respect to the prescribing of, and payment for, Power Mobility Devices (PMDs). This rule defines the term ''power mobility devices (PMDs)'' as power wheelchairs and power operated vehicles (POVs or scooters). This rule conforms our regulations to section 302(a)(2)(E)(iv) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The MMA mandated: (1) A face-to-face examination of the individual be conducted by a physician (as defined in section 1861(r)(1) of the Social Security Act (the Act)), a physician assistant, a nurse practitioner or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act; and (2) that payment may not be made for a power wheelchair unless the physician or treating practitioner has written a prescription for the item. With this information collection request, CMS is seeking approval for the collection requirements associated with CMS–3017–IFC (70 FR 50940); *Form Number:* CMS–10116 (OMB#: 0938–0971); *Frequency:* Recordkeeping and Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal government, State, Local, or Tribal governments; *Number of Respondents:* 17,000; *Total Annual Responses:* 37,400; *Total Annual Hours:* 37,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on May 23, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 17, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 06–2808 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–250]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility Resident Assessment MDS Data and Supporting Regulations in 42 CFR 413.337, 413.343, 424.32, and 483.20; *Form Number:* CMS–R–250 (OMB#: 0938–0739); *Use:* Skilled Nursing Facilities (SNFs) are required to submit the resident assessment data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of Omnibus Budget Reconciliation Act (OBRA) 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th, 60th and 90th days following admission, necessary to administer the payment rate methodology described in 42 CFR 413.337, are subject to the Paperwork Reduction Act. The burden associated with information collection is the sum of the SNF staff time required to complete the Minimum Data Set (MDS), SNF staff time to encode the data, and SNF staff time spent in transmitting the data.; *Frequency:* Reporting—Other, 5th, 14th, 30th, 60th, and 90th days of stay; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 15,352; *Total Annual Responses:* 4,719,118; *Total Annual Hours:* 3,284,247.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: March 16, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 06–2809 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1269–N7]

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG): Announcement of a New Member

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the selection of a new member of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or treatment for medical conditions.

FOR FURTHER INFORMATION CONTACT: Eric Ruiz, (410) 786–0247. George Morey, (410) 786–4653. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. EMTALA applies to all these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for emergency medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR 489.20(l), (m), (q) and (r)(1), (r)(2), (r)(3), and 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the

charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. Section 945(b) of the MMA specifies the composition of the TAG. (For more information regarding the TAG composition see the May 28, 2004 (69 FR 30654) **Federal Register**). The EMTALA TAG held three meetings during calendar year 2005. (See the March 15, 2005 (70 FR 12691), May 18, 2005 (70 FR 28541), and September 23, 2005 (70 FR 55903) **Federal Register**).

II. Selection of New EMTALA TAG Member

In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the EMTALA TAG membership. One of those original members, a physician representative in the field of psychiatry, is unable to complete her term of service. In selecting a replacement, the TAG must maintain the member composition described in section 945(b) of the MMA. We note that section 945(b)(2) of the MMA specifies the physician members of the TAG as follows: ''7 shall be practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry, with no more than one physician from any particular field.'' For this reason and to ensure that the concerns of practicing physicians are appropriately considered during TAG deliberations, another practicing physician in the field of psychiatry has been selected to serve as a member of the TAG. The new member is Sul Ross Thorward, M.D. of Twin Valley Behavioral Healthcare in Columbus, Ohio. Dr. Thorward was selected from the original list of nominees for the EMTALA TAG.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 06–2569 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3163–N]

Medicare Program; Request for Nominations for Members of the Medicare Coverage Advisory Committee and Notice of Meeting of the Medicare Coverage Advisory Committee—May 18, 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for consideration for membership on the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute.

This notice also announces a public meeting of the MCAC. The meeting will address the use of non-invasive imaging technologies versus cardiac catheterization in the diagnosis of coronary artery disease. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

Nominations: Deadline and Address: Nominations will be considered if postmarked by April 23, 2006 and mailed to the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**).

Secretary's Charter: Obtain a copy of the Secretary's Charter for the Medicare Coverage Advisory Committee from Maria Ellis, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop: 1–09–06, Baltimore, MD 21244; (410) 786–0309; *Maria.Ellis@cms.hhs.gov*. This charter is also posted on the following Web site: *http://www.cms.hhs.gov/FACA/downloads/mcaccharter.pdf.*

Meeting: Date and Location: The public meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, on Thursday, May 18, 2006, from 7:30 a.m. until 4:30 p.m., e.d.t.

Presentation and Comments: Interested persons can present data, information, or views orally or in writing on issues pending before the Committee. Please submit written comments to the Executive Secretary by mail or email (see **FOR FURTHER INFORMATION CONTACT**).

Deadline for Written Comments and Presentations: Written comments and presentations for the public meeting must be received by April 24, 2006, 5 p.m., e.d.t. The presentation that will be submitted must be your final presentation; no further changes will be accepted.

Deadline for Registration to Attend Meeting: For security reasons, individuals wishing to attend this meeting must register by close of business on May 11, 2006.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or who have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by May 11, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

Web site: You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPage*.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, Centers for Medicare & Medicaid Services, Central Building 01–09–06, 7500 Security Boulevard, Baltimore, MD 21244; (410) 786–2881; *Michelle.Atkinson@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Nominations

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing the establishment of the Medicare Coverage Advisory Committee (MCAC). The Secretary signed the initial charter for the MCAC on November 24, 1998. The charter was renewed and will terminate on November 24, 2006, unless renewed again by the Secretary.

The MCAC is governed by provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act, as amended (42 U.S.C. 217A).

The MCAC consists of a pool of 100 appointed members. Members are selected from among authorities in clinical medicine of all specialties, administrative medicine, public health, biologic and physical sciences, health care data and information management and analysis, patient advocacy, the economics of health care, medical ethics, and other related professions such as epidemiology and biostatistics, and methodology of trial design. A maximum of 88 members are standard

voting members, and 12 are nonvoting members (6 of which are representatives of consumer interests, and 6 of which are representatives of industry interests).

The MCAC functions on a committee basis. The committee reviews and evaluates medical literature, reviews technology assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The Committee works from an agenda provided by the Designated Federal Official that lists specific issues, and develops technical advice to assist us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare.

B. Meeting

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces a public meeting of the Committee.

The Committee will discuss evidence and hear presentations and public comments regarding the use of non-invasive imaging technologies versus cardiac catheterization in the diagnosis of coronary artery disease.

Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.hhs.gov/coverage/*.

II. Provisions

A. Nominations

As of December 2006, there will be 50 terms of membership expiring, 3 of which are non-voting consumer representatives, and 4 of which are non-voting industry representatives. Accordingly, we are requesting nominations for both voting and non-voting members to serve on the MCAC. Nominees are selected based upon their individual qualifications, and not as representatives of professional associations or societies.

We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the MCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations must be accompanied by curricula vitae. Nomination packages must be sent to the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**).

Nominees for voting membership must have expertise and experience in one or more of the following fields: Clinical medicine of all specialties, administrative medicine, public health, patient advocacy, biologic and physical sciences, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions such as epidemiology and biostatistics, and methodology of trial design.

We are also seeking nominations for seven non-voting representatives, three of which are consumer representatives and four of which are industry representatives. Nominees for this position must possess appropriate qualifications to understand and contribute to the MCAC's work.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MCAC and appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following: Date of birth, place of birth, social security number, title and current position, professional affiliation, home and business address, telephone and fax numbers, e-mail address, and list of areas of expertise. In the nominations letter, we are requesting that the nominee specify whether applying for a voting position, a consumer representative position, or an industry representative position. Potential candidates will be asked to provide detailed information concerning matters such as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 2-year terms. A member can serve after the expiration of the member's term until a successor takes office. Any interested person can nominate one or more qualified persons. Self-nominations are also accepted.

B. Meeting

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee can limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section and submit the following by the *Deadline for Written Comments and Presentations* date listed in the *Meeting* section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and a written copy of your presentation. Your presentation should consider the questions we have posed to the Committee and focus on the issues specific to the topic. The questions will be available on our Web site at *http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPagemeetings*. We require that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons can observe the deliberations, but the Committee will not hear further comments during this time, except at the request of the chairperson. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

1. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend: Register by contacting Maria Ellis, Coverage and Analysis Group, OCSQ; Centers for Medicare & Medicaid Services; 7500 Security Blvd, Central Building C1–09–06, Baltimore, MD 21244; (410) 786–0309; *Maria.Ellis@cms.hhs.gov*. Please provide your name, address, organization, telephone and fax number, and email address.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

This meeting is located on Federal property; therefore, for security reasons, any individuals wishing to attend this meeting must register by close of business on May 11, 2006.

2. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security.

In order to gain access to the building and grounds, individuals must present photographic identification to the Federal Protective Service or Guard Service personnel before being allowed entrance.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all individuals entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Parking permits and instructions will be issued upon arrival.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes before the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2); 42 U.S.C. 217(a), section 222 of the Public Health Service Act, as amended.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 2006.

Barry M. Straube,

Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 06–2568 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9034–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October 2005 through December 2005, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations. Finally, this notice includes a list of Medicare-approved carotid stent facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2134.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive

regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into eight addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to *swais.gpoaccess.gov*, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm*.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare NCD publication titled ''Stem Cell Transplantation,'' use CMS–Pub. 100–03, Transmittal No. 45.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program.)

Dated: March 20, 2006.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

September 26, 2003 (68 FR 55618)
December 24, 2003 (68 FR 74590)
March 26, 2004 (69 FR 15837)
June 25, 2004 (69 FR 35634)
September 24, 2004 (69 FR 57312)
December 30, 2004 (69 FR 78428)
February 25, 2005 (70 FR 9338)
June 24, 2005 (70 FR 36620)
September 23, 2005 (70 FR 55863)
December 23, 2005 (70 FR 76290)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Medicare General Information (CMS Pub. 100–01)
30	Initiate STC testing of the MCS for RRB and HIGLAS Shared System Testing Requirements for Maintainers, Beta Testers, and Contractors.
31	Update to Medicare Deductible, Coinsurance and Premium Rates for 2006 Basis for Determining the Part A Coinsurance Amounts Part B Annual Deductible.
32	Scheduled Release for January 2006 Software Programs and Pricing/Coding Files.
33	Change Management Process—Electronic Change Information Management Portal (eChimp).
	Medicare Benefit Policy (CMS Pub. 100–02)
39	Auditory Osteointegrated and Auditory Brainstem Devices Hearing Aids and Auditory Implants.
40	Skilled Nursing Facility Prospective Payment System.
	Certification and Recertification by Physicians for Extended Care Services.
	Who May Sign the Certificate or Recertification for Extended Care Services Rural Health Center/Federally Qualified Health Center for Hospital/Skilled Nursing Facility Outpatients or Inpatients.
41	Telehealth Originating Site Facility Fee Payment Amount Update.
42	January 2006 Update of the Hospital Outpatient Prospective Payment System Manual Instruction: Changes to Coding and Payment for Observation.
43	List of Medicare Telehealth Services.
	Payment-Physician/Practitioner at a Distant Site.
	Medicare National Coverage Determinations (CMS Pub. 100–03)
43	This Transmittal is rescinded and replaced by Transmittal 45.
44	Lung Volume Reduction Surgery.
45	Stem Cell Transplantation.
	Medicare Claims Processing (CMS Pub. 100–04)
695	General Appeals Process in Initial Determinations (Implementation Dates for Fiscal Intermediary Initial Determinations Issued on or After May 1, 2005 and Carrier Initial Determinations Issued on or After January 1, 2006).
	CMS Decisions Subject to the Administrative Appeals Process.
	Who May Appeal.
	Provider or Supplier Appeals When the Beneficiary Is Deceased.
	Steps in the Appeals Process: Overview.
	Where to Appeal.
	Time Limits for Filing Appeals and Good Cause for Extension of the Time Limit for Filing Appeals.
	Good Cause.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	General Procedure to Establish Good Cause.
	Conditions and Examples That May Establish Good Cause for Late Filing by Beneficiaries.
	Conditions and Examples That May Establish Good Cause for Late Filing by Providers, Physicians, or Other Suppliers.
	Good Cause Not Found for Beneficiary, or for Provider, Physician, or Other Supplier.
	Amount in Controversy Requirements.
	Parties to an Appeal.
696	2006 Annual Update of Healthcare Common Procedure Coding System Codes for Skilled Nursing Facility Consolidated Billing for the Common Working File, Medicare Carriers and Fiscal Intermediaries.
	Skilled Nursing Facility Consolidated Billing Annual Update Process for Fiscal Intermediaries.
697	Appeals of Claims Decisions: Redeterminations and Reconsiderations (implementation date May 1, 2005).
	Time Limit for Filing a Request for Redetermination.
	Reporting Redeterminations on the Appeals Report.
698	The Supplemental Security Income Medicare Beneficiary Data for Fiscal Year 2006 for the Inpatient Rehabilitation Facility Prospective Payment System.
	Low Income Percentage Adjustment: The Supplemental Security Income Medicare Beneficiary Data for Inpatient Rehabilitation Facilities Paid Under the Prospective Payment System.
699	This Transmittal is rescinded and replaced by Transmittal 761.
700	Revision to Chapter 31—Attestation.
	Eligibility Extranet Workflow.
701	New Diagnosis Code Requirements for Method II Home Dialysis Claims Supplier Documentation Required.
702	Manualization for Physician/Practitioner/Supplier Participation Agreement and Assignment Carrier Claims and Carrier Rules for Limiting Charge.
	Physician/Practitioner/Supplier Participation Agreement and Assignment—Carrier Claims.
	Mandatory Assignment on Carrier Claims.
	Filing Claims to a Carrier for Nonassigned Services.
	Carrier Annual Participation Program.
	Carrier Participation and Billing Limitations.
703	This Transmittal is rescinded and replaced by Transmittal 707.
704	Discontinuation of Biannual Recertification List for Certified Registered Nurse.
	Anesthetist Services.
	Issuance of Unique Physician Identification Numbers.
	Annual Review of Certified Registered Nurse Anesthetist Certifications.
705	Modification to Reporting of Diagnosis Codes for Screening Mammography Claims.
	Healthcare Common Procedure Coding System and Diagnosis Codes for Mammography Services.
706	Payment Methodology for Rehabilitation Services in Indian Health Service/Tribally Owned and/or Operated Hospitals and Hospital-Based Facilities.
	Services Paid Under the Physician Fee Schedule.
707	Inpatient Prospective Payment System Outlier Reconciliation Outliers.
	Cost to Charge Ratios.
	Statewide Average Cost to Charge Ratios.
	Threshold and Marginal Cost.
	Transfers.
	Reconciliation.
	Time Value of Money
	Procedure for Fiscal Intermediaries to Perform and Record Outlier.
	Reconciliation Adjustments.
	Specific Outlier Payments for Burn Cases.
	Quality Improvement Organization Reviews and Adjustments.
	Return Codes for Pricer.
708	This Transmittal is rescinded and replaced by Transmittal 722.
709	This Transmittal is rescinded and replaced by Transmittal 720.
710	Issued to a specific audience, not posted to Internet/Intranet due to sensitivity of Instruction.
711	This Transmittal is rescinded and replaced by Transmittal 763.
712	Correction to Change Request 3949, Section 50.3.3 in IOM to Add 23x Type of Bill.
	Billing and Claims Processing Requirements Related to Expedited Determinations.
713	This Transmittal is rescinded and replaced by Transmittal 748.
714	Payment Window Edit Corrections Within the Common Working File.
	Outpatient Services Treated As Inpatient Services.
715	New Designated Competitive Acquisition Program Carrier Contractor ID Numbers.
716	Modifiers for Transportation of Portable X-rays (R0075) When Billed by Skilled Nursing Facilities.
	Transportation of Equipment Billed by a Skilled Nursing Facility to a Fiscal Intermediary.
717	Disabling the Revenue/Healthcare Common Procedure Coding System Consistency.
	Edit Codes in the Fiscal Intermediary Shared System.
	Fiscal Intermediary Consistency Edits.
718	Source of Admission Code 'D'.
719	This Transmittal is rescinded and replaced by Transmittal 736.
720	Issued to a specific audience, not posted to Internet/Intranet due to sensitivity of Instruction.
721	Use of Value Codes 48 and 49 on End-Stage Renal Disease Bills.
	Required Information for In-Facility Claims Paid Under the Composite Rate.
	Epoetin Alfa Facility Billing Requirements Using UB–92/Form CMS–1450.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Darbeopoetin Alfa Facility Billing Requirements Using UB–92/Form CMS–1450.
722	2006 Annual Update for the Health Professional Shortage Area Bonus Payments.
723	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
724	Appeals of Claims Decisions: Redeterminations and Reconsiderations (Implementation Dates for Fiscal Intermediary Initial Determinations Issued on or After May 1, 2005 and Carrier Initial Determinations Issued on or After January 1, 2006).
	Filing a Request for Redetermination.
	Appeal Rights for Dismissals.
	Dismissal Letters.
	Model Dismissal Notices.
	Reconsideration—The Second Level of Appeal.
	Filing a Request for a Reconsideration.
	Time Limit for Filing a Request for a Reconsideration.
	Contractor Responsibilities—General.
	Qualified Independent Contractor Case File Development.
	Qualified Independent Contractor Case File Preparation.
	Forwarding Qualified Independent Contractor Case Files.
	Qualified Independent Contractor Jurisdictions.
	Tracking Cases.
	Effectuation of Reconsiderations.
725	This Transmittal is rescinded and replaced by Transmittal 737.
726	Smoking and Tobacco-Use Cessation Counseling Services: Common Working File Inquiry for Providers.
	Common Working File Inquiry.
727	Annual Type of Service.
728	Installation of the January 2006 Inpatient Prospective Payment System Pricer and Hospice Pricer.
729	Revised October 2005 Quarterly Average Sales Price Medicare Part B Drug Pricing File, Effective October 1, 2005.
730	Calendar Year 2006 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory Procedures.
731	Payment for Office or Other Outpatient Evaluation and Management Visits (Codes 99201–99215).
732	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
733	Repeat Tests for Automated Multi-Channel Chemistries for End-Stage Renal Disease Beneficiaries.
734	Redefined Type of Bill, 14x, for Non-Patient Laboratory Specimens.
	Maryland Waiver Hospitals.
	Clinical Diagnostic Laboratory Tests Furnished by Critical Access Hospitals.
	Hospital Laboratory Services Furnished to Nonhospital Patients.
735	Processing All Diagnosis Codes Reported on Claims Submitted to Carriers.
	Items 14–33–Provider of Service or Supplier Information.
736	Clarification and Update to Hospital Billing Instructions and Payment for Epoetin Alfa and Darbepoetin Alfa for Beneficiaries With End-Stage Renal Disease.
	Epoetin Alfa for End-Stage Renal Disease Patients.
	Payment Amount for Epoetin Alfa.
	Payment for Epoetin Alfa in Other Settings.
	Epoetin Alfa Provided in Hospital Outpatient Departments.
	Payment for Darbepoetin Alfa in Other Settings.
	Payment for Darbepoetin Alfa in the Hospital Outpatient Department.
	Hospitals Billing for Epoetin Alfa for Non-End-Stage Renal Disease Patients.
	Hospitals Billing for Darbepoetin Alfa for Non-End-Stage Renal Disease Patients.
737	New ICD–9–CM Codes for Beneficiaries With Chronic Kidney Disease and New Healthcare Common Procedure Coding System for Reporting Epoetin Alfa and Darbepoetin Alfa.
	Required Information for In-Facility Claims Under the Composite Rate.
738	Calendar Year 2005 Payment for Medicare Part B Radiopharmaceuticals Not Paid on a Cost or Prospective Payment Basis.
739	Erroneous Guidance—Basis to Waive Penalty.
	Overview.
	Erroneous Program Guidance: Basis to Waive Penalty.
	Policy.
	Basic Conditions That Must Be Met To Waive Penalty.
	Guidance Was Erroneous.
	Guidance Was Issued by the Secretary or Contractor.
	Contractor Acted Within Scope of Authority.
	Guidance Was in Writing.
	Guidance Related to Item, Service, or Claim.
	Guidance Was Issued Timely.
	Provider Accurately Presented Circumstances in Writing.
	Alternative Basis for Satisfying the ''Presentation'' Condition.
	Provider Followed Guidance.
	Provider's Reliance Was Reasonable.
	Penalty Considered.
	General Limitations on Scope.
	Notice of Penalty Waiver Policy.
	Request for a Penalty Waiver Determination.
	Jurisdiction.
	Jurisdiction Regarding Error.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Jurisdiction to Complete the Penalty Waiver Determination.
	Determining Whether the Guidance Was Erroneous.
	Completing the Penalty Waiver Determination.
	Timeliness of Request.
	Ripeness.
	Sufficient Information.
	Mootness.
	Required Conditions Other Than Error.
	Completing the Determination.
	Notice of the Penalty Waiver Determination.
	Reconsideration of the Penalty Waiver Determination.
	Recordkeeping.
	Reporting.
	Corrective Action.
	Effective Date.
740	Change to the Common Working File Skilled Nursing Facility Consolidated.
	Billing Edits for Evaluation and Management Services Billed to Fiscal.
	Intermediaries by Hospitals.
	Hospital's ''Facility Charge'' in Connection with Clinic Services of a Physician.
741	New Condition Codes 49 and 50.
742	Quarterly Update to Correct Coding Initiative Edits, V12.0, Effective January 1, 2006.
743	Remittance Advice Remark Code and Claim Adjustment Reason Code Update.
744	File Descriptions and Instructions for Retrieving the 2006 Fee Schedules and Healthcare Common Procedure Coding System through CMS'' Mainframe Telecommunications System.
	Recurring Update Notification Containing New Pricing File Names and Retrieval Dates for 2006.
745	Elimination of the Durable Medical Equipment Regional Carrier Information Form.
	Billing Drugs Electronically '' National Council Prescription Drug Program.
	Certificate of Medical Necessity.
746	January 2006 Quarterly Average Sales Price Medicare Part B Drug Pricing File, Effective January 1, 2006, and Revisions to January 2005, April 2005, July 2005, and October 2005 Quarterly Average Sales Price Medicare Part B Drug Pricing Files.
747	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
748	New G Code for Power Mobility Devices.
	Power Mobility Devices Code G0372.
749	Reasonable Charge Update for 2006 for Splints, Casts, Dialysis Supplies, Dialysis Equipment, and Certain Intraocular Lenses.
750	2006 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment.
751	National Monitoring Policy for EPO and Aranesp for End-Stage Renal Disease.
	Patients Treated in Renal Dialysis Facilities.
	Chapter 8, Section 60.4, Epoetin Alfa.
	Chapter 8, section 60.7, Darbepoetin Alfa for End-Stage Renal Disease Patients.
752	Eliminate the Use of Surrogate Unique Physicians Identification Numbers (OTH000) on Medicare Claims.
753	Update of Contact Information for the Do Not Forward Reports.
	Reporting Requirements—Carriers.
754	Supplying Fee and Inhalation Drug Dispensing Fee Revisions and Clarifications.
	Pharmacy Supplying Fee and Inhalation Drug Dispensing Fee.
755	Common Working File Updates for Carrying National Provider Identifier.
756	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
757	Resubmission of Inpatient Psychiatric Facility Prospective Payment System.
	Claims with Chronic Renal Failure Comorbid Condition.
758	Changes to the Laboratory National Coverage Determination Edit Software for January 2006.
759	Therapy Caps to be Effective January 1, 2006.
	The Financial Limitation.
	Discipline Specific Outpatient Rehabilitation Modifiers—All Claims.
760	Instructions for Downloading the Medicare Zip Code File.
761	This Transmittal is rescinded and replaced by Transmittal 777.
762	Ambulance Inflation Factor for CY 2006.
763	Update to Repetitive Billing—Manualization.
	Frequency of Billing to Fiscal Intermediaries for Outpatient Services Hospital and Community Mental Health Center Reporting Requirements for Services Performed on the Same Day.
764	Update to the Prospective Payment System for Home Health Agencies for Calendar Year 2006.
765	Instructions for Downloading the Medicare Zip Code File.
766	This Transmittal is rescinded and replaced by Transmittal 776.
767	Skilled Nursing Facility Prospective Payment System Revisions to IOM 100–4—Manualization.
	Physician's Services and Other Professional Services Excluded From Part A.
	Prospective Payment System Payment and the Consolidated Billing Requirement.
	Billing Skilled Nursing Facility Prospective Payment System Services.
	Billing Procedures for a Composite Skilled Nursing Facility or a Change in Provider Number.
	Billing for Services After Termination of Provider Agreement, or After Payment is Denied for New Admission.
	General Rules.
	Billing for Covered Services.
	Part B Billing.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
768	Lung Volume Reduction Surgery.
769	Surrogate Unique Provider Identification Numbers Reported on Independent Diagnostic Testing Facility Claims.
770	Fee Schedule Update for 2006 for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies.
771	Revisions to Pub. 100–04, Medicare Claims Processing Manual in Preparation for the National Provider Identifier.
	Fiscal Intermediary Consistency Edits.
	Identifying Institutional Providers.
	Payment Under Prospective Payment System Diagnosis-Related Groups.
	Payment to Hospitals and Units Excluded From Inpatient Prospective Payment System for Direct Graduate Medical Education and Nursing and Allied Health.
	Education for Medicare Advantage Enrollees.
	Requirements for Critical Access Hospital Services, Critical Access Hospital.
	Skilled Nursing Care Services and Distinct Part Units.
	Payment for Post-Hospital Skilled Nursing Facility Care Furnished by a Critical Access Hospital.
	Swing-Bed Services.
	Outlier Payments: Cost-to-Charge Ratios.
	Affected Medicare Providers.
	Billing Requirements Under Long Term Care Hospital Prospective Payment System.
	Coinsurance Election.
	Maryland Waiver Hospitals.
	Zip Code Files.
	Special Partial Hospitalization Billing Requirements for Hospitals, Community Mental Health Centers, and Critical Access Hospitals.
	Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers.
	Part B Outpatient Rehabilitation and Comprehensive Outpatient Rehabilitation Facility Services—General.
	Dialysis Provider Number Series.
	Shared Systems Changes for Medicare Part B Drugs for End-Stage Renal Disease Independent Dialysis Facilities.
	Federally Qualified Health Centers.
	Request for Anticipated Payment.
	Home Health Prospective Payment System Claims.
	Completing the Uniform (Institutional Provider) Bill (Form CMS–1450) for Hospice Election.
	Care Plan Oversight.
772	Fiscal Intermediary Shared System Edit Updates for Epoetin Alfa and Darbepoetin Alfa Healthcare Common Procedure Coding System Changes Effective January 1, 2006.
773	Announcement of the Medicare Federally Qualified Health Center Supplemental Payment.
	Billing for Supplemental Payments for Federally Qualified Health Centers Under Contract With Medicare Advantage Plans.
774	Implementation of Changes in End-Stage Renal Disease Payment for Calendar Year 2006.
	Required Information for In-Facility Claims Paid Under the Composite Rate.
775	Home Care and Domiciliary Care Visits (Codes 99324–99350).
776	Stem Cell Transplantation.
777	Competitive Acquisition Program for Part B Drugs.
778	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
779	New Waived Tests.
780	Common Working File Database Extract into Next Generation Desktop Data Mart.
781	Revised Manual Instructions for Processing End-Stage Renal Disease Exceptions Under the Composite Rate Reimbursement System.
	General Instructions for Processing Requests Under the Composite Rate Reimbursement System.
	Criteria for Approval of End-Stage Renal Disease Exception Requests.
	Procedures for Requesting Exceptions to End-Stage Renal Disease Payment Rates.
	Period of Approval: Payment Exception Request.
	Criteria for Re-filing a Denied Exception Request.
	Responsibility of Intermediaries.
	Payment Exception: Pediatric Patient Mix.
	Payment Exception: Self Dialysis Training Costs in Pediatric Facilities.
782	This Transmittal is rescinded and replaced by Transmittal 788.
783	January 2006 Non-Outpatient Prospective Payment System Outpatient Code Editor Specifications Version 21.1.
784	January 2006 Outpatient Prospective Payment System Code Editor Specifications Version 7.0.
785	January 2006 Update of the Hospital Outpatient Prospective Payment System.
	Manual Instruction: Changes to Coding and Payment for Drug Administration—Manulization.
	Coding and Payment for Drug Administration.
	Administration of Drugs via Implantable or Portable Pumps.
	Chemotherapy Drug Administration.
	Non-Chemotherapy Drug Administration.
786	January 2006 Update of the Hospital Outpatient Prospective Payment System: Summary of Payment Policy Changes, Outpatient Prospective Payment System Pricer Logic Changes, and Instructions for Updating the Outpatient Provider Specific File.
787	January 2006 Update of the Hospital Outpatient Prospective Payment System.
	Manual Instruction: Changes to Coding and Payments for Observation.
	Observation Services Overview.
	General Billing Requirements for Observation Services.
	Revenue Code Reporting.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Reporting Hours of Observation.
	Billing and Payment for Observation Services Furnished Prior to January 1, 2006.
	Billing and Payment for Packaged Observation Services Furnished Between August 1, 2000 and December 31, 2005.
	Billing and Payment for Separately Payable Observation Services Furnished Between April 1, 2002 and December 31, 2005.
	Billing and Payment for Direct Admission to Observation Services Furnished Between January 1, 2003 and December 31, 2005.
	Billing and Payment for Observation Services Furnished On or After January 1, 2006.
	Billing and Payment for All Hospital Observation Services Furnished on or After January 1, 2006.
	Separate and Package Payment for Direct Admission to Observation.
	Separate and Package Payments for Observation.
	Services Not Covered as Observation Services.
788	Consultation Services (Codes 99241–99255).
789	Ambulance Fee Schedule—Medical Conditions List: Manualization.
790	List of Medicare Telehealth Services.
	Payment Methodology for Physician/Practitioner at the Distant Site.
	Originating Site Facility Fee Payment Methodology.
	Submission of Telehealth Claims for Distant Site Practitioners.
	Contractor Editing of Telehealth Claims.
791	This Transmittal is rescinded and replaced by Transmittal 793.
792	Nursing Facility Services (Codes 99304–99318).
793	Revision to Chapter 31—Addition of Hospice Data HIPAA 270/271 Eligibility.
	Eligibility Extranet Workflow.
794	Announcement of Medicare Supplemental Payments to Federally Qualified Health Centers Under Contract with Medicare Advantage Plans.
	Billing for Supplemental Payments for Federally Qualified Health Centers Under Contract with Medicare Advantage Plans.
795	Redefined Type of Bill 14X for Non-Patient Laboratory Specimens—Change.
	Request 3835 Manualization.
	Type of Bill.
	Packaging.
	General Rules for Reporting Outpatient Hospital Services.
	Bill Types Subject to Outpatient Prospective Payment System.
	Standard Method—Cost-Based Facility Services, With Billing of Carrier for Professional Services.
	Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115.
	Percentage Fee Schedule Payment for Professional Services.
	Certified Registered Nurse Anesthetist Services (Certified Registered Nurse Anesthetist Pass-Through Exemption of 115 Percent Fee Schedule Payments for Certified Registered Nurse Anesthetist Services).
	Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115.
	Percent Fee Schedule Payment for Professional Services.
	Hospital and Skilled Nursing Facility Patients.
	Special Billing Instructions for Rural Health Centers and Federally Qualified Health Centers.
	Payment Requirements.
	Payment Methodology and Healthcare Common Procedure Coding System Coding.
	General Explanation of Payment.
	Method of Payment for Clinical Laboratory Tests—Place of Service Variation.
	Hospital Billing Under Part B.
	Critical Access Hospital Outpatient Laboratory Service.
	Computer-Aided Detection Add-On Codes.
	Payment Method for Rural Health Centers and Federally Qualified Health Centers.
	Healthcare Common Procedure Coding System Codes for Billing.
	Type of Bill and Revenue Codes for Form CMS–1450.
	Revenue Code and Health Common Procedure Coding System Codes for Billing.
	Payment Method—Fiscal Intermediaries and Carriers.
	Healthcare Common Procedure Coding System, Revenue, and Type of Service Codes.
	Ambulatory Blood Pressure Monitoring Billing Requirements.
	Fiscal Intermediary Billing Requirements.
	Bill Types.
796	Announcement of Medicare Rural Health Clinics and Federally Qualified Health Centers Payment Rate.
797	Full Replacement of CR 4095, Diagnosis Code Requirements for Method II.
	Home Dialysis Claims CR 4095 Is Rescinded.
	Supplier Documentation Required.
798	Emergency Update to the 2006 Medicare Physician Fee Schedule Database.
799	Reminder Notice of the Implementation of Ambulance Transition Schedule.
800	Clinical Diagnostic Laboratory Date of Service for Archived Specimens.
801	Instructions for Reporting New HCPCS Code V2788 for Presbyopia-Correcting Intraocular Lenses.
	Presbyopia-Correcting Intraocular Lenses (General Policy Information).
	Payment for Physician Services and Supplies.
	Coding and General Billing Requirements.
	Provider Notification Requirements.
	Beneficiary Liability.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
802	Termination of the Medicare HIPAA Incoming Claim Contingency Plan, Addition of a Self-Assessable Unusual Circumstance, Modification of the Obligated to Accept as Payment in Full Exception, and Modification of Administrative Simplification Compliance Act Exhibit Letters A, B and C General HIPAA Electronic Data Interchange Requirements.
	Continued Support of Pre-HIPAA Electronic Data Interchange Formats.
	National Council Prescription Drug Plans Narrative Portion of Prior Authorization Segment.
	A/X12 837 Coordination of Benefits.
	C/Legacy Formats.
	Use of Imaging, External Keyshop, and In-House Keying for Entry of Transaction Data Submitted on Paper.
	Electronic Data Interchange Receiver Testing by Carriers, Durable Medical Equipment Regional Carriers and Intermediaries.
	Carrier, Durable Medical Equipment Regional Carrier, and Fiscal Intermediary Submitter/Receiver Testing with Legacy Formats during the HIPAA Contingency Period.
	Discontinuation of Use of Coordination of Benefit Claim Legacy Formats Following Successful HIPAA Format Testing.
	Free Claim Submission Software.
	Key Shop and Image Processing.
	Mandatory Electronic Submission of Medicare Claims.
	Exceptions.
	Unusual Circumstance Waivers.
	Unusual Circumstance Waivers Subject to Provider Self-Assessment.
	Medicare Secondary Payer (CMS Pub. 100–05)
37	Manualizing Long-Standing Medicare Secondary Payer Policy in Chapter 3 of the Medicare Secondary Payer Internet Only Manual.
	Limitation on Right To Charge a Beneficiary Where Services Are Covered by a Group Health Plan.
	Right of Providers to Charge Beneficiary Who Has Received Primary Payment From a Group Health Plan.
	Right of Physicians and Other Suppliers To Charge Beneficiary Who Has Received Primary Payment From a Group Health Plan.
	Payment When Proper Claim Not Filed.
	Situations in Which Medicare Secondary Payer Billing Applies.
	Provider, Physician, and Other Supplier Responsibility When a Request is Received From an Insurance Company or Attorney.
	Provider, Physician, and Other Supplier Responsibility When Duplicate Payments Are Received.
	Incorrect Group Health Plan Primary Payments.
	Retroactive Application.
	General Policy.
	Provider, Physician, and Other Supplier Billing.
	Provider Billing Where Services Are Covered by a Group Health Plan.
	Provider Billing Where Services Are Accident-Related and No-Fault Insurance May Be Available.
	Provider Bills No-Fault Insurance First.
	No-Fault Insurance Does Not Pay.
	Liability Claim Also Involved.
	Responsibility of Provider Where Benefits May Be Payable Under Workers' Compensation.
	Responsibility of Provider Where Benefits May Be Payable Under the Federal Black Lung Program.
	Provider Billing Medicare for Secondary Benefits Where Services Are Covered by a Group Health Plan.
	Instructions to Providers on How To Submit Claims to a Contractor When There Are Multiple Payers.
	Instructions to Physicians and Other Suppliers on How to Submit Claims to Contractors When There Are One or More Primary Payers.
	Completing the Form CMS 1450 in Medicare Secondary Payer Situations by Providers.
	Inpatient Services.
	Outpatient Bills, Part B Inpatient Services, and Home Health Agency Bills.
	Partial Payment by Primary Payer for Inpatient Services, Outpatient Services, Part B Inpatient Services and Home Health Agency Bills.
	Partial Payment by Primary Payer That Applies to Medicare Covered Services.
	Annotation of Claims Denied by Group Health Plans, Liability or No-Fault Insurers.
	Annotation of Claims to Request Conditional Payments.
	Completing the Form CMS 1500 in MSP Situations by Physicians and Other Suppliers of Services.
38	Hospital Audit Workload Updates.
	Hospital Review Protocol for Medicare Secondary Payer.
	Reviewing Hospital Files.
	Frequency of Reviews and Hospital Selection Criteria.
	Methodology for Review of Admission and Bill Processing Procedures.
	Selection of Bill Sample.
	Methodology for Review of Hospital Billing Data.
	Review of Form CMS–1450.
	Use of Systems Files for Review.
	Assessment of Hospital Review.
39	Request to Change Lead Contractor.
	Coordination with the Coordination of Benefits Contractor.
	Contractors Medicare Secondary Payer Auxiliary File Update Responsibility.
	Coordination of Benefit Contractor Electronic Correspondence Referral System.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Providing Written Documents to the Coordination of Benefit Contractor.
	Contractor Record Retention.
	Notification to Contractor of Medicare Secondary Payer Auxiliary File Updates.
	Referring Calls to Coordination of Benefit Contractor.
	Changes in Contractor Initial Medicare Secondary Payer Development Activities.
	Additional Activities Arranged by Non-Group Health Plan Medicare Secondary Payer.
	Coordination of Benefit Contractors Numbers.
40	Updates to the Group Health Plan Demand Letters.
	Recovery From the Provider, Physician or Other Supplier.
	Recovery From the Beneficiary That Has Received Payment From Both Medicare And a Group Health Plan.
	Provider, Physician or Other Supplier Group Health Plan Demand Letter.
	Beneficiary Group Health Plan Demand Letter.
	Recovery Management & Accounting System/Healthcare Integrated General Ledger Accounting System Group Health Plan General Information.
	Recovery Management & Accounting System/Healthcare Integrated General Ledger Accounting System Group Health Plan Demand Process.
	Recovery Management & Accounting System/Healthcare Integrated General Ledger Accounting System Group Health Plan Demand Letter.
	How To Resolve This Demand.
41	Full Replacement of and Rescinding Change Request (CR) 3504—Modification to Online Medicare Secondary Payer Questionnaire.
	Admission Questions To Ask Medicare Beneficiaries.
42	Updates to Medicare Secondary Payer Accounts Receivable Write-Off Procedures.
	Reclassification to Currently Not Collectible.
	Write-Off Closed for Medicare Secondary Payer Accounts Receivable.
	Identification of Medicare Secondary Payer Write-Off Closed Accounts.
	Write-off Closed Definition.
	Basis for Termination of Collection.
	Criteria for Medicare Secondary Payer Based Debts To Qualify for Write-Off Closed.
	Data Requirements and Format for Recommendations to the RO for Write-Off Closed.
	Write-Off Closed Notifications from Central Officer for Debts Which Have Been Returned by Treasury and Central Office Has Determined That No Further Collection Attempts Are Appropriate.
	Write off closed Approval Process for section 70.3.3 Recommendations to the Regional Office.
	Financial Reporting for Medicare Secondary Payer Write off Closed Regional Office/Central Office Responsibilities and Timeframes for Approvals And/Or Recommendations.
	Elimination of Automated Systems Write-Off Closed Actions for Medicare Secondary Payer Accounts Receivable; Reminder Zero Backend Tolerance For Medicare Secondary Payer Accounts Receivable.
	Date for Establishment of Medicare Secondary Payer Accounts Receivable.
	Additional Instructions for ''Write-Off-Closed'' for Debts of Less Than $25.00.
43	Expanding the Voluntary Data Sharing Agreement Coordination of Benefit Contractor Numbers for the Common Working File.
	Definition of Medicare Secondary Payer/Common Working File Terms.
44	This Transmittal is rescinded and replaced by Transmittal 46.
45	Interest on Medicare Secondary Payment Debts.
	Interest on Medicare Secondary Payment Recovery Claims.
	Medicare Secondary Payment Debt Interest Calculation Methodology.
	Medicare Secondary Payment Debt Interest Accrual.
	Medicare Secondary Payment Debt Interest Accrual on Partial Payments.
	Medicare Secondary Payment Debt Interest Assessment.
	Additional Rules with Regard to the Assessment and Collection of Interest for Medicare Secondary Payment Based Debts.
46	Updates to the Electronic Correspondence Referral System User Guide v9.0 and Quick Reference Card v9.0.
	Coordination of Benefit Contractor Electronic Referral System (includes the addition of Attachments 1 and 2).
	Medicare Financial Management (CMS Pub. 100–06)
79	Discovery Code Indication for Recovery Audit Contractor Non-Medicare Secondary Payer Identified Overpayments.
80	Medicare Contractors' Monthly Cash Collections.
	Medicare Contractor Monthly Cash Collections Worksheet.
81	Recurring Update Notification for the Notice of New Interest Rate for Medicare Overpayments and Underpayments.
82	This Transmittal is rescinded and replaced by Transmittal 85.
83	This Transmittal is rescinded and replaced by Transmittal 84.
84	Revised Instructions on Contractor Procedures for Provider Audit, and Clarification of Continuing Education and Training Requirements for Medicare Auditors.
	Submission of Cost Report Data to CMS.
	Audit Priority Consideration.
	Pre-Exit Conference.
	Finalization of Audit Adjustments.
	Standards for Performing Medicare Audits.
	Qualifications.
	Due Professional Care.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Internal Quality Control.
	Final Settlement of the Cost Report.
	Timing and Completion of Home Office Audits.
	Acceptance of Home Office Cost Statements.
85	Expansion of Form 5 of the Contractor Reporting of Operational and Workload Data.
86	Development of New Report To Capture Benefit Improvement Protection Act and Medicare Modernization Act Appeals Data.
	Monthly Statistical Report on Intermediary and Carrier Part A and Part B Appeals Activity Form (CMS–2592).
	General.
	Section I—Redeterminations.
	Section II—Qualified Independent Contractor Reconsiderations.
	Section III—Administrative Law Judge Results.
	Section IV—Department Appeals Board Effectuations.
	Clerical Error Reopenings.
	Validation of Reports.
87	Update to Carrier Demand Letter Appeals Language.
	Provider Protests Its Liability.
	Medicare State Operations Manual (Pub. 100–07)
12	SOM Appendix PP—Guidance to Surveyors for Long Term Care Facilities.
13	Revisions to Chapter 2, ''The Certification Process,'' Appendix E—''Providers of Outpatient Physical Therapy or Outpatient Speech Language Pathology Services'' and Appendix ''K—Comprehensive Outpatient Rehabilitation Facilities''.
	Types of Out Patient Therapy/Outpatient Speech Language Pathology Providers.
	Rehabilitation Agency.
	Clinics and Public Health Agencies.
	Sites of Service Provision.
	Outpatient Physical Therapy/Outpatient Speech Language Pathology Services Provided at More Than One Location.
	Outpatient Physical Therapy/Outpatient Speech Language Pathology Services at Locations Other Than Extension Locations.
	State Agency Annual Report to Regional Office on Locations of Extension Locations.
	Survey of Outpatient Physical Therapy/Outpatient Speech Language Pathology Extension Locations.
	Scope and Site of Services.
	Shared Space With Another Provider or Supplier.
	Sharing of Equipment.
14	This Transmittal is rescinded and replaced by Transmittal 15.
15	Medical Director Guidance.
	Medicare Program Integrity (CMS Pub.100–08)
126	Implementation of Program Safeguard Contractor Access to the VIPS Medicare Shared System at All Durable Medical Equipment Carriers.
127	Complaint Screening Revisions.
128	Evidence of Medical Necessity: Wheelchair and Power Operated Vehicle Claims.
129	Replacing the Use of Unique Physician Identification Numbers With the National Provider Identifiers.
130	Correction/Clarification of Chapter 11.
	Medical Review Overview.
	Routine Review Workload and Cost (Activity Code 21002).
	Policy Reconsideration/Revision Activities (Activity Code 21206).
	New Policy Development Activities (Activity Code 21208).
	Complex Probe Review Workload and Cost (Activity Code 21220).
	Prepay Complex Review Workload and Cost (Activity Code 21221).
	Reporting LPET Workload and Cost Information and Documentation in CAFM II.
	Education Delivered to a Group of Providers Workload and Cost (Activity Code 24117).
131	Medical Review Matching of Electronic Claims and Additional Documentation in the Medical Review Process.
	Documentation Specifications for Areas Selected for Prepayment or Postpayment Medical Review.
	Prepayment Review of Claims for Medical Review Purposes.
132	New Process for Web Maintenance of Provider Enrollment Contractor Contact Information.
133	Enrolling Indian Health Service Facilities as Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Suppliers.
134	Change in Provider Enrollment Timeliness Standards.
	Changes of Information.
	Timeframes for Processing Enrollment Applications.
	Medicare Contractor Beneficiary and Provider Communications (CMS Pub. 100–09)
14	Provider Inquiry Reporting Standardization.
15	Provider Customer Service Program.
	Introduction.
	Provider Services.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
	Guidelines for Telephone Service. Toll Free Network Services. Publication of Toll Free Numbers. Call Handling Requirements. Customer Service Assessment and Management System Reporting Requirements. Staff Development and Training. Quality Call Monitoring. Fraud and Abuse. Provider Contact Center User Group. Performance Improvements. Written Inquiries. Contractor Guidelines for High Quality Responses to Written Inquiries. Quality Written Correspondence Monitoring. Quality Written Correspondence Monitoring Program. Quality Written Correspondence Monitoring Calibration. Quality Written Correspondence Monitoring Performance Standards. Disclosure of Information (Adherence to the Privacy Act) Disclosure Desk. Reference for Call Centers—Provider Portion. Provider Communications—Program Elements. Provider Service Plan. Provider Inquiry Analysis. Provider Claims Submission Error Analysis. Provider Communication Advisory Group. Bulletins/Newsletters/Educational Materials. Seminars/Workshops/Trainings/Teleconferences. New Technologies/Electronic Media. Training of Providers in Electronic Claims Submission. Provider Education and Beneficiary Use of Preventive Benefits. Internal Development of Provider Issues. Training of Provider Education Staff. Partnering with External Entities. Other Provider Education Subjects and Activities. Provider Education Material. Provider/Supplier Service Plan Quarterly Activity Report. Charging Fees to Providers for Medicare Education and Training Activities. Provider/Supplier Communications—Program Elements. Provider/Supplier Service Plan. Provider/Supplier Inquiry Analysis. Provider/Supplier Claims Submission Error Analysis. Provider/Supplier Communications Advisory Group. Bulletins/Newsletters/Educational Materials. Seminars/Workshops/Trainings/Teleconferences. New Technologies/Electronic Media. Training of Providers/Supplier in Electronic Claims Submission. Provider/Supplier Education and Beneficiary Use of Preventive Benefits. Internal Development of Provider/Supplier Issues. Training of Provider/Supplier Education Staff. Partnering With External Entities. Other Specific Provider/Supplier Education Subjects and Activities. Provider/Supplier Education Material. Provider Customer Service Program.
	Medicare Managed Care (CMS Pub. 100–16)
74	Changes in Manual Instructions for Payment Principles for Cost Based Health Maintenance Organization/Comprehensive Medical Plan.
	Medicare Business Partners Systems Security (CMS Pub. 100–17)
06	Business Partners Systems Security Manual.
	Demonstrations (CMS Pub. 100–19)
29	Notification of New Value and Condition Codes for Medicare Demonstrations.
30	The Medicare Chronic Care Improvement, ''Medicare Health Support,'' Program.
31	This Transmittal is rescinded and replaced by Transmittal 35.
32	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October through December 2005]

Transmittal No.	Manual/Subject/Publication No.
33	Amendment to Rate for CPT 98943 for the Section 651 Expansion of Coverage of Chiropractic Services Demonstration.
34	This Transmittal is rescinded and replaced by Transmittal 36.
35	Physician's Voluntary Reporting Program.
36	2006 Oncology Demonstration Project.
	One Time Notification (CMS Pub. 100–20)
182	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Of Instruction.
183	This Transmittal is rescinded and replaced by Transmittal 183
184	National Modifier and Condition Code To Be Used To Identify Disaster Related Claims.
185	Payment Allowances for the Influenza Virus Vaccine (CPT 90655, 90656, 90657, and 90658) and the Pneumoccocal Vaccine (CPT 90732) When Payment Is Based on 95 Percent of the Average Wholesale Price.
186	Coverage by Medicare Advantage Plans for Implantable Automatic Cardiac Defibrillator Services Not Previously Included in MA Capitation Rates.
187	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Of Instruction.
188	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Of Instruction.
189	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
190	Stage 2 Requirements for Use and Editing of National Provider Identifier Numbers Received in Electronic Data Interchange Transaction, via Direct Data Entry Screens, or Paper Claim Forms.
191	Noridian North Dakota/South Dakota Carrier Number Issue.
192	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality Of Instruction.
193	Change of Medicare Part B Contractor in the State of Utah from Regence Blue Cross and Blue Shield of Utah to Noridian Administrative Services.
194	Calculation of the Interim Payment of Indirect Medical Education Through The Inpatient Prospective Payment System Pricer for Hospitals That Received an Increase to Their Full-Time Equivalent Resident Caps Under Section 422 of the Medicare Modernization Act, Pub. L. 108–173.
195	Change of Medicare Part A Contractor in the States of Idaho, Oregon, and Utah From Regence Blue Cross and Blue Shield to Noridian Administrative Services.
196	Issued to a specific audience, not posted to the Internet/Intranet due to Sensitivity of Instruction.
197	Inpatient Prospective Payment System and Skilled Nursing Facilities Wage Index Corrections Fiscal Year 2006.
198	Termination of the Existing Eligibility-File Based Crossover Process at All Medicare Contractors.
199	New Medicare Summary Note Message Used for the Physician's Voluntary Reporting Program.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER OCTOBER THROUGH DECEMBER 2005

Publication date	FR Vol. 70 page number	CFR parts affected	File code	Title of regulation
October 4, 2005	57785	405, 412, 413, 419, 422, and 485.	CMS–1500–F2	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Correcting Amendment.
October 5, 2005	58260	431 and 457	CMS–6026–IFC	Medicaid Program and State Children's Health Insurance Program (SCHIP); Payment Error Rate Measurement.
October 7, 2005	58834	483	CMS–3198–F	Medicare and Medicaid Programs; Condition of Participation: Immunization Standard for Long Term Care Facilities.
October 7, 2005	58649	421	CMS–6022–P	Medicare Program; Termination of Non-Random Prepayment Review.
October 11, 2005	59182	411	CMS–1303–P	Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Exceptions for Certain Electronic Prescribing and Electronic Health Records Arrangements.
October 28, 2005	62124		CMS–1316–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council, December 5, 2005.
October 28, 2005	62065	483	CMS–3121–F	Medicare and Medicaid Program; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nursing Staffing Information.
November 7, 2005	67568	423	CMS–0011–F	Medicare Program; E-Prescribing and the Prescription Drug Program.
November 9, 2005	68132	484	CMS–1301–F	Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2006.
November 10, 2005	68516	419 and 485	CMS–1501–FC	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER OCTOBER THROUGH DECEMBER 2005—Continued

Publication date	FR Vol. 70 page number	CFR parts affected	File code	Title of regulation
November 21, 2005	70478	414	CMS–1325–IFC3.	Medicare Program; Exclusion of Vendor Purchases Made Under the Competitive Acquisition Program (CAP) for Outpatient Drugs and Biologicals Under Part B for the Purpose of Calculating the Average Sales Price (ASP).
November 21, 2005	70116	405, 410, 411, 413, 414, 424, and 426.	CMS1502–F and CMS–1325–F.	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006 and Certain Provisions Related to the Competitive Acquisition Program of the Outpatient Drugs and Biologicals Under Part B.
November 22, 2005	70532	418	CMS–1022–F	Medicare Program; Hospice Care Amendments.
November 25, 2005	71163		CMS–1294–N	Medicare Program; Coverage and Payment of Ambulance Services; Inflation Update for CY 2006.
November 25, 2005	71020	144, 146, 148, and 150	CMS–4091–F	Federal Enforcement in Group and Individual Health Insurance Markets.
November 25, 2005	71008	424	CMS–0008–F	Medicare Program; Electronic Submission of Medicare Claims.
November 25, 2005	71006	403	CMS–1428–F3	Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2005 Rates: Fire Safety Requirements for Religious Non-Medical Health Care Institutions: Correction to Reinstate Requirements for Written Fire Control Plans and Maintenance of Documentation.
December 13, 2005	73623	405	CMS–1908–F	Medicare Program; Application of Inherent Reasonableness Payment Policy to Medicare Part B Services (Other Than Physician Services).
December 23, 2005	76317		CMS–4112–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education, January 26, 2006.
December 23, 2005	76315		CMS–1329–N	Medicare Program; Town Hall Meeting on the Fiscal Year 2007 Applications for New Medical Services and Technologies Add-On Payments Under the Hospital Inpatient Prospective Payment System Scheduled for February 16, 2006.
December 23, 2005	76313		CMS–1289–N	Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—March 1, 2, and 3, 2006.
December 23, 2005	76290		CMS–9033–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2005.
December 23, 2005	76199	484	CMS–3006–F	Medicare and Medicaid Programs; Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies.
December 23, 2005	76198	423	CMS–0011–CN	Medicare Program; E-Prescribing and the Prescription Drug Program; Correction.
December 23, 2005	76196	422	CMS–4069–F4	Medicare Program; Establishment of the Medicare Advantage Program.
December 23, 2005	76176	419 and 485	CMS–1501–CN2	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Correction.
December 23, 2005	76175	418	CMS–1286–CN2	Medicare Program; Hospice Wage Index for Fiscal Year 2006.

Addendum V—National Coverage Determinations [October Through December 2005]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage.*

NATIONAL COVERAGE DETERMINATIONS

[October through December 2005]

Title	NCDM section	TN No.	Issue date	Effective date
Lung Volume Reduction Surgery	240.1	R44NCD	12/2/05	11/17/05
Stem Cell Transplantation	110.8	R45NCD	12/6/05	11/28/05

Addendum VI—FDA-Approved Category B IDEs [October Through December 2005]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the fourth quarter, October through December 2005.

IDE/Category

G040190
G040194
G050048
G050092
G050116
G050118
G050140
G050151
G050187
G050191
G050192
G050193
G050195
G050198
G050200
G050202
G050204
G050205
G050206
G050207
G050208
G050210
G050214
G050217
G050221
G050222
G050223
G050224
G050228
G050230
G050231
G050232
G050234
G050235
G050236
G050239
G050244
G050245

Addendum VII—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB CONTROL NUMBERS

[Approved CFR Sections in Title 42, Title 45, and Title 20 (**Note:** Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")]

OMB No.	Approved CFR Sections
0938–0008	414.40, 424.32, 424.44.
0938–0022	413.20, 413.24, 413.106.
0938–0023	424.103.
0938–0025	406.28, 407.27.
0938–0027	486.100–486.110.
0938–0034	405.821.
0938–0035	407.40.
0938–0037	413.20, 413.24.
0938–0041	408.6.
0938–0042	410.40, 424.124.
0938–0045	405.711.
0938–0046	405.2133.
0938–0050	413.20, 413.24.
0938–0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5.
0938–0065	485.701–485.729.
0938–0074	491.1–491.11.
0938–0080	406.13.
0938–0086	420.200–420.206, 455.100–455.106.
0938–0101	430.30.
0938–0102	413.20, 413.24.
0938–0107	413.20, 413.24.
0938–0146	431.800–431.865.
0938–0147	431.800–431.865.
0938–0151	493.1–493.2001.
0938–0155	405.2470.
0938–0193	430.10–430.20, 440.167.
0938–0202	413.17, 413.20.
0938–0214	411.25, 489.2, 489.20.
0938–0236	413.20, 413.24.
0938–0242	416.44, 418.100, 482.41, 483.270, 483.470.
0938–0245	407.10, 407.11.
0938–0251	406.7.
0938–0266	416.1–416.150.
0938–0267	485.56, 485.58, 485.60, 485.64, 485.66.
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245.

OMB CONTROL NUMBERS—Continued

[Approved CFR Sections in Title 42, Title 45, and Title 20 (**Note:** Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")]

OMB No.	Approved CFR Sections
0938–0270	405.376.
0938–0272	440.180, 441.300–441.305.
0938–0273	485.701–485.729.
0938–0279	424.5.
0938–0287	447.31.
0938–0296	413.170, 413.184.
0938–0301	413.20, 413.24.
0938–0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100.
0938–0313	489.11, 489.20.
0938–0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631.
0938–0334	491.9, 491.10.
0938–0338	486.104, 486.106, 486.110.
0938–0354	441.50.
0938–0355	442.30, 488.26.
0938–0358	488.26.
0938–0359	412.40–412.52.
0938–0360	488.60.
0938–0365	484.10, 484.11, 484.12, 484.14, 484.16, 484.18, 484.20, 484.36, 484.48, 484.52.
0938–0372	414.330.
0938–0378	482.60–482.62.
0938–0379	442.30, 488.26.
0938–0382	442.30, 488.26.
0938–0386	405.2100–405.2171.
0938–0391	488.18, 488.26, 488.28.
0938–0426	480.104, 480.105, 480.116, 480.134.
0938–0429	447.53.
0938–0443	478.13, 478.34, 478.36, 478.42.
0938–0444	1004.40, 1004.50, 1004.60, 1004.70.
0938–0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78.
0938–0447	405.2133.
0938–0448	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E.
0938–0449	440.180, 441.300–441.310.
0938–0454	424.20.
0938–0456	412.105.
0938–0463	413.20, 413.24, 413.106.
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960.
0938–0469	417.126, 422.502, 422.516.
0938–0470	417.143, 422.6.
0938–0477	412.92.
0938–0484	424.123.
0938–0501	406.15.
0938–0502	433.138.
0938–0512	486.304, 486.306, 486.307.
0938–0526	475.102, 475.103, 475.104, 475.105, 475.106.
0938–0534	410.38, 424.5.
0938–0544	493.1–493.2001.
0938–0564	411.32.
0938–0565	411.20–411.206.
0938–0566	411.404, 411.406, 411.408.
0938–0573	412.256.
0938–0578	447.534.
0938–0581	493.1–493.2001.
0938–0599	493.1–493.2001.
0938–0600	405.371, 405.378, 413.20.
0938–0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 440.170, 483.6, 483.10, 484.10, 489.102.
0938–0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493.1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 394.1299.
0938–0618	433.68, 433.74, 447.272.
0938–0653	493.1771, 493.1773, 493.1777.
0938–0657	405.2110, 405.2112.
0938–0658	405.2110, 405.2112.
0938–0667	482.12, 488.18, 489.20, 489.24
0938–0685	410.32, 410.71, 413.17, 424.57, 424.73, 424.80, 440.30, 484.12.
0938–0686	493.551–493.557.
0938–0688	486.304, 486.306, 486.307, 486.310, 486.316, 486.318, 486.325.
0938–0691	412.106.
0938–0692	466.78, 489.20, 489.27.
0938–0701	422.152.

OMB CONTROL NUMBERS—Continued

[Approved CFR Sections in Title 42, Title 45, and Title 20 (**Note:** Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")]

OMB No.	Approved CFR Sections
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180.
0938–0703	45 CFR 148.120, 134,122, 148.124, 148.126, 148.128.
0938–0714	411.370–411.389.
0938–0717	424.57.
0938–0721	410.33.
0938–0723	421.300–421.316.
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24.
0938–0732	417.126, 417.470
0938–0734	45 CFR 5b.
0938–0739	413.337, 413.343, 424.32, 483.20.
0938–0749	424.57.
0938–0753	422.000–422.700.
0938–0754	441.151, 441.152.
0938–0758	413.20, 413.24.
0938–0760	484.55, 484.205, 484.245, 484.250.
0938–0761	484.11, 484.20.
0938–0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350.
0938–0770	410.2.
0938–0778	422.111, 422.564.
0938–0779	417.126, 417.470, 422.64, 422.210.
0938–0781	411.404, 484.10.
0938–0786	438.352, 438.360, 438.362, 438.364.
0938–0790	460.12–460.210.
0938–0792	491.8, 491.11.
0938–0798	413.24, 413.65, 419.42.
0938–0802	419.43.
0938–0818	410.–141–410.146, 414.63.
0938–0829	422.568.
0938–0832	Parts 489 and 491.
0938–0833	483.350–483.376.
0938–0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180.
0938–0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64.
0938–0846	411.352–411.361.
0938–0857	Part 419.
0938–0860	Part 419.
0938–0866	45 CFR Part 162.
0938–0872	413.337, 483.20.
0938–0873	422.152.
0938–0874	45 CFR Parts 160 and 162.
0938–0878	Part 422 Subpart F and G.
0938–0887	45 CFR 148.316, 148.318, 148.320.
0938–0897	412.22, 412.533.
0938–0907	412.230, 412.304, 413.65.
0938–0910	422.620, 422.624, 422.626.
0938–0911	426.400, 426.500.
0938–0915	421.120, 421.122.
0938–0916	483.16.
0938–0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810.
0938–0921	414.804.
0938–0931	45 CFR Part 142.408, 162.408, and 162.406.
0938–0933	438.50.
0938–0934	403.766.
0938–0936	423.
0938–0939	405.502.
0938–0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350.
0938–0950	405.910.
0938–0951	423.48.
0938–0953	405.1200 and 405.1202.
0938–0954	414.906, 414.908, 414.910, 414.914, 414.916.

Addendum VIII—Medicare-Approved Carotid Stent Facilities [October Through December 2005]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

October 2005

10/4/05

Firelands Regional Medical Center, 1101 Decatur Street, Sandusky, OH 44870
Medicare Provider #360025
qMeritCare Hospital, 720 4th Street N, P.O. Box MC, Fargo, ND 58122
Medicare Provider #350011
Presbyterian Healthcare, 200 Hawthorne Lane, Charlotte, NC 28204
Medicare Provider #340053
Regions Hospital, 640 North Jackson Street, St. Paul, MN 55101
Medicare Provider #240106
Saint Agnes Medical Center, 1303 East Herndon Avenue, Fresno, CA 93720
Medicare Provider #050093
Saint Francis Medical Center, 211 Saint Francis Drive, Cape Girardeau, MO 63703–8399
Medicare Provider #260183
Staten Island University Hospital, 475 Seaview Avenue, Staten Island, NY 10305–3498
Medicare Provider #330160
Baptist Medical Center, 111 Dallas Street, San Antonio, TX 78205–1230
Medicare Provider #450058
Bayonne Medical Center, 29th Street at Avenue E, Bayonne, NJ 07002
Medicare Provider #310025
Memorial Medical Center, 1086 Franklin Street, Johnstown, PA 15905–4398
Medicare Provider #390110
NorthEast Medical Center, 920 Church Street, North, Concord, NC 28025
Medicare Provider #340001
St. Francis Medical Center, 309 Jackson Street, P.O. Box 1901, Monroe, LA 71210–1901
Medicare Provider #190125
UHHS University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106–5006
Medicare Provider #360137

10/11/05

St. Catherine Hospital, 4321 Fir Street, East Chicago, IN 46312
Medicare Provider #015008
University Hospital, 234 Goodman ML 700, Cincinnati, OH 45219
Medicare Provider #360003
Frankford Hospital, Frankford Avenue & Wakeling Street, Philadelphia, PA 19124
Medicare Provider #390115
Memorial Hospital of South Bend, 615 North Michigan Street, South Bend, IN 46601
Medicare Provider #150058
Mills-Peninsula Health Services, 1783 El Camino Real, Burlingame, CA 94010
Medicare Provider #050007
Mount Clemens General Hospital, 1000 Harrington Boulevard, Mount Clemens, MI 48043
Medicare Provider #230227
SouthCrest Hospital, 8801 South 101st East Avenue, Tulsa, OK 74133
Medicare Provider #370202
St. Mary Medical Center, 1500 South Lake Park Avenue, Hobart, IN 46342
Medicare Provider #150034
St. Mary's Health System, 900 E. Oak Hill Avenue, Knoxville, TN 37917
Medicare Provider #440120
University of Illinois Medical Center at Chicago, 1740 West Taylor Street, Suite 1400, Chicago, IL 60612
Medicare Provider #140150
Wuesthoff Health System Rockledge, 110 Longwood Avenue, P.O. Box 565002 Rockledge, FL 32956–5002
Medicare Provider #010092

10/14/05

Baylor Regional Medical Center at Grapevine, 1650 West College Street, Grapevine, TX 76051
Medicare Provider #450563
Harborview Medical Center, 325 Ninth Avenue, Seattle, WA 98104–2499
Medicare Provider #500064
Hendrico Doctors' Hospital, Forest Campus—Administration, 1602 Skipwith Road, Richmond, VA 23229
Medicare Provider #049118
Methodist Dallas Medical Center, P.O. Box 655999, Dallas, TX 75265–5999
Medicare Provider #450051
North Kansas City Hospital, 2800 Clay Edwards Drive, Kansas City, MO 64116
Medicare Provider #260096
University Community Hospital, Inc., 3100 East Fletcher Avenue, Tampa, FL 33613
Medicare Provider #100173

10/21/05

AtlantiCare Regional Medical Center, 65 Jimmie Leeds Road, Pomona, NJ 08240
Medicare Provider #310064
Boston Medical Center Corporation, One Boston Medical Center Place, Boston, MA 02118
Medicare Provider #220031
Robert Wood Johnson University Hospital, One Robert Wood Johnson Place, P.O. Box 2601, New Brunswick, NJ 08903–2601
Medicare Provider #210038
University Hospital, 1350 Walton Way, Augusta, GA 30901–2629
Medicare Provider #110028
Via Christi Regional Medical Center, 929 N. St. Francis, Wichita, KS 67214–3882
Medicare Provider #170122

10/24/05

Advocate South Suburban Hospital, 17800 South Kedzie Avenue, Hazel Crest, IL 60429–0989
Medicare Provider #140250
Baptist Health Medical Center-Little Rock, 9601 Interstate 630, Exit 7, Little Rock, AR 72205–7299
Medicare Provider #040114
Bassett Healthcare, One Atwell Road, Cooperstown, NY 13326–1394
Medicare Provider #330136
Bay Regional Medical Center, 1900 Columbus Avenue, Bay City, MI 48708
Medicare Provider #230041
Mercy Medical Center, 500 S. Oakwood Road, P.O. Box 3370, Oshkosh, WI 54904–3370
Medicare Provider #520048
Sharp Chula Vista Medical Center, 751 Medical Center Court, Chula Vista, CA 91911–6699
Medicare Provider #050222
The Miriam Hospital, 164 Summit Avenue, Providence, RI 02906
Medicare Provider #410012
The University of California San Diego Medical Center, 200 W. Arbor Drive, San Diego, CA 92103
Medicare Provider #050025
USC University Hospital, 1500 San Pablo Street, Los Angeles, CA 90033
Medicare Provider #050696

10/27/05

Baylor Heart & Vascular Hospital, 621 North Hall Street, Dallas, TX 75226
Medicare Provider #450851
Columbus Regional Healthcare System, 710 Center Street P.O. Box 951, Columbus, GA 31902
Medicare Provider #110064
Deaconess Billings Clinic, 2800 Tenth Avenue North, P.O. Box 37000, Billings, MT 59107–7000
Medicare Provider #270004
Kaiser Permanente San Diego Medical Center, Kaiser Foundation Hospital, 4647 Zion Avenue, San Diego, CA 92120
Medicare Provider #050515
Kaweah Delta District Hospital, 400 West Mineral King, Visalia, CA 93291–6263
Medicare Provider #050057
Lexington County Health Services District, Inc. d/b/a Lexington Medical Center, 2720 Sunset Boulevard, West Columbia, SC 29169
Medicare Provider #420073
Nazareth Hospital, 2601 Holme Avenue, Philadelphia, PA 19152
Medicare Provider #390204
Sharp Memorial Hospital, 7901 Frost Street, San Diego, CA 92123
Medicare Provider #050100
St. Vincent Medical Center, 2800 Main Street, Bridgeport, CT 06606
Medicare Provider #070028
Summa Health Systems, 525 E. Market Street, Akron, OH 44304–1698
Medicare Provider #360020
The Health Network of The Chester County Hospital, 701 E. Marshall Street, West Chester, PA 19380
Medicare Provider #390179
The Toledo Hospital, 2124 N. Cove Boulevard, Toledo, OH 43606
Medicare Provider #360068

November 2005

11/1/05

Brandon Regional Hospital, 119 Oakfield Drive, Brandon, FL 33511
Medicare Provider #100243
Cape Cod Hospital, P.O. Box 640, 27 Park

Street, Hyannis, MA 02601
Medicare Provider #220012
St. Elizabeth Hospital, 1506 South Oneida Street, Appleton, WI 54915
Medicare Provider #520009

11/3/05

Athens Regional Medical Center, 1199 Prince Avenue, Athens, GA 30606
Medicare Provider #110074
Foote Hospital, 205 North East Avenue, Jackson, MI 49201
Medicare Provider #230092
Memorial Herman Southwest Hospital, 7600 Beechnut, Houston, TX 77074
Medicare Provider #450184
Regional Medical Center of San Jose, 225 North Jackson Avenue, San Jose, CA 95116–1691
Medicare Provider #050125
St. Luke Hospital, 7380 Turfway Road, Florence, KY 41042
Medicare Provider #180045

11/4/05

Arlington Memorial Hospital, 800 West Randol Mill Road, Arlington, TX 76012
Medicare Provider #450064
Calvert Memorial Hospital, 100 Hospital Road, Prince Frederick, MD 20678
Medicare Provider #210039
Community Memorial Hospital of San Buenaventura, 147 North Brent Street, Ventura, CA 93003–2854
Medicare Provider #050394
Lancaster General Hospital, 555 North Duke Street, P.O. Box 3555, Lancaster, PA 17604–3555
Medicare Provider #390100
St. Clair Hospital, 1000 Bower Hill Road, Pittsburgh, PA 15243
Medicare Provider #390228

11/10/05

Banner Thunderbird Medical Center, 5555 West Thunderbird Road, Glendale, AZ 85306
Medicare Provider #030089
CHRISTUS Spohn Hospital Corpus Christi Shoreline, 600 Elizabeth Street, Corpus Christi, TX 78404
Medicare Provider #450046
Cooper University Hospital, One Cooper Plaza, Camden, NJ 08103–1489
Medicare Provider #310014
Maine Medical Center, 22 Bramhall Street, Portland, ME 04102–3175
Medicare Provider #200009
Northeast Alabama Regional Medical Center, Post Office Box 2208, Anniston, AL 36202
Medicare Provider #010078
Virginia Hospital Center, 1701 N. George Mason Drive, Arlington, VA 22205–3698
Medicare Provider #490050
Wuestoff Health System Melbourne, 250 North Wickham Road, Melbourne, FL 32935
Medicare Provider #100291

11/14/05

Anne Arundel Medical Center, 2001 Medical Parkway, Annapolis, MD 21401
Medicare Provider #210023
CHRISTUS Schumpert Health System, One St. Mary Place, Shreveport, LA 71121
Medicare Provider #190041
Eisenhower Medical Center, 39000 Bob Hope Drive, Rancho Mirage, CA 92270
Medicare Provider #050573
Methodist Healthcare-Memphis Hospitals, 1211 Union Avenue, Memphis, TN 38104
Medicare Provider #440049
Waukesha Memorial Hospital, 725 American Avenue, Waukesha, WI 53188
Medicare Provider #520008

11/18/05

Ashtabula County Medical Center, 2420 Lake Avenue, Ashtabula, OH 44004
Medicare Provider #360125
Carle Foundation Hospital, 611 S. Park Street, Urbana, IL 61801
Medicare Provider #140091
New York Methodist Hospital, 506 Sixth Street, Brooklyn, NY 11215–9008
Medicare Provider #330236
Rush-Copely Medical Center, 2000 Ogden Avenue, Aurora, IL 60504
Medicare Provider #140029
Saint Clare's Hospital, 25 Pocono Road, Denville, NJ 07834
Medicare Provider #310050
Sherman Health, 934 Center Street, Elgin, IL 60120
Medicare Provider #140030
The Hospital at Westlake Medical Center, 5656 Bee Caves Road, Ste M–302, Austin, TX 78746
Medicare Provider #670006

11/21/05

CentraState Medical Center, 901 W. Main Street, Freehold, NJ 07728
Medicare Provider #310111
Doctors' Hospital of Opelousas, 3983 I–49 South Service Road, Opelousas, LA 70570
Medicare Provider #190191
Henry Ford Hospital, 2799 West Grand Boulevard, Detroit, MI 48202
Medicare Provider #230053
LaPorte Regional Health Systems, 1007 Lincolnway, P.O. Box 250, LaPorte, IN 46352–0250
Medicare Provider #150006
Memorial Hermann Hospital, 6411 Fannin Street, Houston, TX 77030
Medicare Provider #450068
Morton Plant North Bay Hospital, 6600 Madison Street, New Port Richey, FL 34652
Medicare Provider #100063
Santa Barbara Cottage Hospital, Post Office Box 689, Pueblo at Bath Street, Santa Barbara, CA 93102–0689
Medicare Provider #050396
St. John Medical Center, 1923 South Utica Avenue, Tulsa, OK 74104
Medicare Provider #370114
Kaiser Foundation Hospital, Hawaii Region, 3288 Moanalua Road, Honolulu, HI 96819
Medicare Provider #120011
King County Public Hospital District #1, DBA: Valley Medical Center, 400 South 43rd Street, P.O. Box 50010, Renton, WA 98058–5010
Medicare Provider #500088
Medical Center East, 50 Medical Park East Drive, Birmingham, AL 35235
Medicare Provider #010011

11/28/05

Mercy Hospital, 2601 Electric Avenue, Port Huron, MI 48060–6518
Medicare Provider #230031
Northwest Community Hospital, 800 West Central Road, Arlington Heights, IL 60005–2392
Medicare Provider #140252
St. Joseph's Healthcare, 15855 Nineteen Mile Road, Clinton Township, MI 48038
Medicare Provider #230047

11/29/05

Alegent Health Immanuel Medical Center, 6901 North 72nd Street, Omaha, NE 68122–1799
Medicare Provider #099398
Desert Valley Hospital, 16850 Bear Valley Road, Victorville, CA 92395
Medicare Provider #050709
MedCentral Health System, 335 Glessner Avenue, Mansfield, OH 44903–2265
Medicare Provider #360118
Memorial Hospital of Carbondale, 405 West Jackson Street, P.O. Box 10000, Carbondale, IL 62902–9000
Medicare Provider #140164
Providence Medical Center, 8929 Parallel Parkway, Kansas City, KS 66112
Medicare Provider #170009
St. Mary Medical Center, 18300 Highway 18, Apple Valley, CA 92307
Medicare Provider #05300
Sutter Medical Center Santa Rosa, 3325 Chanate Road, Santa Rosa, CA 95404
Medicare Provider #050291
Tucson Heart Hospital, 4888 North Stone Avenue, Tucson, AZ 85704
Medicare Provider #030100
United Hospital Center, Post Office Box 1680, Clarksburg, WV 26302–1680
Medicare Provider #510006

December 2005

12/1/05

All Saints Healthcare System, 3801 Spring Street, Racine, WI 53405
Medicare Provider #520096
Beaufort Memorial Hospital, 955 Ribaut Road, Beaufort, SC 29902–5454
Medicare Provider #420067
Self Regional Healthcare, 1325 Spring Street, Greenwood, SC 29646
Medicare Provider #420071

12/5/05

Citrus Memorial Health Foundation, Inc., 502 W. Highland Blvd, Inverness, FL 34452–4754
Medicare Provider #100023
Poudre Valley Hospital, 1024 South Lemay Avenue, Fort Collins, CO 80524
Medicare Provider #060010
St. Joseph's Hospital Health Center, 301 Prospect Avenue, Syracuse, NY 13203–1898
Medicare Provider #330140
UNC Hospitals, 101 Manning Drive, Chapel Hill, NC 27514
Medicare Provider #340061

12/6/05

O'Connor Hospital, 2105 Forest Avenue, San Jose, CA 95128
Medicare Provider #050153
University of Minnesota Medical Center

Fairview, 2450 Riverside Avenue, Minneapolis, MN 55424
Medicare Provider #240080
Wyoming Medical Center, 1233 E. 2nd Street, Casper, WY 82601
Medicare Provider #530012

12/12/05

Chesapeake General Hospital, 736 Battlefield Boulevard, North, Chesapeake, VA 23320
Medicare Provider #490120
Exempla Lutheran Medical Center, 8300 West 38th Avenue, Wheat Ridge, CO 80033
Medicare Provider #060009
Gaston Memorial Hospital, 2525 Court Drive, Gastonia, NC 28054, Medicare Provider #340032
Parkridge Medical Center, 2333 McCallie Avenue, Chattanooga, TN 37404, Medicare Provider #440156

12/19/05

Baton Rouge General Medical Center, 3600 Florida Boulevard, Baton Rouge, LA 70806, Medicare Provider #190065
Broward General Medical Center, 1600 South Andrews Avenue, Ft. Lauderdale, FL 33316, Medicare Provider #100039
Good Samaritan Medical Center, 1309 Flagler Drive, West Palm Beach, FL 33401, Medicare Provider #100287
Largo Medical Center, 201 14th Street SW, Mail P.O. Box 2905, Largo, FL 33770, Medicare Provider #100248
Memorial Hermann Baptist Hospital-Beaumont, 3080 College Street, Beaumont, TX 77701, Medicare Provider #450346
The Nebraska Medical Center, 987400 Nebraska Medical Center, Omaha, NE 68198–7400, Medicare Provider #280013
Providence Everett Medical Center, 1321 Colby Avenue, Everett, WA 98201, Medicare Provider #500014
Roper Hospital, 316 Calhoun Street, Charleston, SC 29401, Medicare Provider #420087
Santa Clara Valley Medical Center, 751 South Bascom Avenue, San Jose, CA 95128, Medicare Provider #050038
Stanford Hospital & Clinics, 300 Pasteur Drive, Stanford, CA 94305, Medicare Provider #050441
The University of Chicago Hospitals, AMB W–606 MC 6091, 5841 South Maryland Avenue, Chicago, IL 60637–1470, Medicare Provider #140088
University of Utah Hospitals and Clinics, 50 North Medical Drive, Salt Lake City, UT 84132, Medicare Provider #460009

12/21/05

Community Medical Center Healthcare System, 1800 Mulberry Street, Scranton, PA 18510, Medicare Provider #390001
Mercy General Health Partners in Muskegon, Michigan, 1500 East Sherman Boulevard, Muskegon, MI 49444, Medicare Provider #230004
St. Luke's Medical Center, 190 East Bannock Street, Boise, ID 83712, Medicare Provider #130006

12/28/05

Riverside Healthcare Systems, LP, Dba Riverside Community Hospital, 4445 Magnolia Avenue, Riverside, CA 92501, Medicare Provider #050022
Santa Rosa Memorial Hospital, 1165 Montgomery Drive, Santa Rosa, CA 95405–4801, Medicare Provider #050174
San Joaquin Community Hospital, 2615 Eye Street, P.O. Box 2615, Bakersfield, CA 93303–2615, Medicare Provider #050455
United Hospital, 333 North Smith Avenue, St. Paul, MN 55102, Medicare Provider #240038

12/30/05

Georgetown University Hospital, 3800 Reservoir Road, NW, Washington, DC 20007–2113, Medicare Provider #090004
Memorial Health Care System, 2525 de Sales Avenue, Chattanooga, TN 37404–1102, Medicare Provider #440091
Mercy Medical Center, 1343 Fountain Boulevard, P.O. Box 1380, Springfield, OH 45501–1380, Medicare Provider #360086
Munson Medical Center, 1105 Sixth Street, Traverse City, MI 49684–2386, Medicare Provider #230097
Salem Hospital, 665 Winter Street SE, Post Office Box 14001, Salem, OR 97309–5014, Medicare Provider #380051
University of Mississippi Medical Center, 2500 North State Street, Jackson, MS 39216, Medicare Provider #250001

[FR Doc. 06–2807 Filed 3–23–06; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4117–PN]

Medicare Program; Application for Deeming Authority for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations Submitted by URAC

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice announces URAC's submission of an application for deeming authority as a national accreditation organization for health maintenance organizations and local preferred provider organizations participating in the Medicare Advantage program. This announcement describes the criteria to be used in evaluating the application and provides information for submitting comments during a public comment period that will span at least 30 days.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 28, 2006.

ADDRESSES: In commenting, please refer to file code CMS–4117–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4117–PN, P.O. Box 8016, Baltimore, MD 21244–8016. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–3159 in advance to schedule your arrival with one of our staff members; Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHS Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Shaheen Halim, PhD, (410) 786–0641.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us

by referencing the file code CMS–4117–PN.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization (MCO) that has a Medicare Advantage (MA) (formerly, Medicare+Choice) contract with the Centers for Medicare & Medicaid Services (CMS). The regulations specifying the Medicare requirements that must be met in order for an MCO to enter into an MA contract with CMS are located at 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MCO must provide and the requirements that the organization must meet to be an MA contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Generally, for an organization to enter into an MA contract, the organization must be licensed by the State as a risk bearing organization as set forth in part 422 of our regulations. Additionally, the organization must file an application demonstrating that it meets other Medicare requirements in part 422 of our regulations. Following approval of the contract, we engage in routine monitoring and oversight audits of the MA organization to ensure continuing compliance. The monitoring and oversight audit process is comprehensive and uses a written protocol that itemizes the Medicare requirements the MA organization must meet.

As an alternative for meeting some Medicare requirements, an MA organization may be exempt from CMS monitoring of certain requirements in subsets listed in section 1852(e)(4)(B) of the Act as a result of an MA organization's accreditation by a CMS-approved accrediting organization (AO). In essence, the Secretary ''deems'' that the Medicare requirements are met based on a determination that the AO's standards are at least as stringent as Medicare requirements. As we specify at § 422.157(b)(2) of our regulations, the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO will have to re-apply to CMS.

An organization that applies for Medicare Advantage deeming authority is generally recognized by the industry as an entity that accredits MCOs that are licensed as a health maintenance organization (HMO) or a preferred provider organization (PPO). As we specify at § 422.157(b)(2) of our regulations, the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must re-apply to CMS. Section 1852(e)(4)(C) of the Act requires that within 210 days of receipt of an application, the Secretary shall determine whether the applicant meets criteria specified in section 1865(b)(2) of the Act.

On June 4, 2004 URAC submitted to CMS an application for deeming authority that was later withdrawn. On October 12, 2005, URAC submitted an application for approval as an accrediting organization for Medicare Advantage HMOs and local PPOs in the following six areas:

- Quality improvement.
- Antidiscrimination.
- Access to services.
- Confidentiality and accuracy of enrollee records.
- Information on advance directives.
- Provider participation rules.

To be approved for deeming authority, an accrediting organization must demonstrate that its accreditation program requirements meet or exceed the Medicare requirements for which it is seeking the authority to deem compliance.

II. Deeming Application Approval Process

The application process for deeming authority includes a review of URAC's application in accordance with the criteria specified by our regulations at § 422.158(a). This includes, but is not limited to, the following:

- The equivalency of URAC's requirements for HMOs and PPOs to CMS' comparable MA organization requirements.
- URAC's survey process, to determine the following:
- The frequency of surveys.
- The types of forms, guidelines, and instructions used by surveyors.
- Descriptions of the accreditation decision making process, deficiency notification and monitoring process, and compliance enforcement process.
- Detailed information about individuals who perform accreditation surveys including:
- Size and composition of the survey team;
- Education and experience requirements for the surveyors;
- In-service training required for surveyor personnel;
- Surveyor performance evaluation systems; and
- Conflict of interest policies relating to individuals in the survey and accreditation decision process.
- Descriptions of the organization's:
- Data management and analysis system;
- Policies and procedures for investigating and responding to complaints against accredited organizations;
- Types and categories of accreditation offered and MA organizations currently accredited within those types and categories.

In accordance with § 422.158(b) of our regulations, the applicant must provide documentation relating to:

- Its ability to provide data in a CMS compatible format;
- The adequacy of personnel and other resources necessary to perform the required surveys and other activities; and
- Assurances that it will comply with ongoing responsibility requirements specified in § 422.157(c) of our regulations.

In accordance with section 1865(b)(3)(A) of the Act, this proposed notice solicits public comment on the ability of URAC's accreditation program to meet or exceed the Medicare requirements for which it seeks authority to deem.

III. Evaluation of Application for Deeming Authority

On October 12, 2005, URAC submitted all the necessary information to permit us to make a determination concerning its request for approval as a deeming authority for MA organizations that are licensed as either HMOs or PPOs. Under § 422.158(a) of the regulations, our review and evaluation of a national accreditation organization will consider, but not necessarily be limited to, the following information and criteria:

- The equivalency of URAC's requirements for HMOs and PPOs to CMS' comparable MA organization requirements.
- URAC's survey process, to determine the following:
- The frequency of surveys.

- The types of forms, guidelines, and instructions used by surveyors.
- Descriptions of the accreditation decision making process, deficiency notification and monitoring process, and compliance enforcement process.
- Detailed information about individuals who perform accreditation surveys including:
- Size and composition of the survey team;
- Education and experience requirements for the surveyors;
- In-service training required for surveyor personnel;
- Surveyor performance evaluation systems; and
- Conflict of interest policies relating to individuals in the survey and accreditation decision process.
- Descriptions of the organization's:
- Data management and analysis system;
- Policies and procedures for investigating and responding to complaints against accredited organizations; and
- Types and categories of accreditation offered and MA organizations currently accredited within those types and categories.

In accordance with § 422.158(b) of our regulations, the applicant must provide documentation relating to—

- Its ability to provide data in a CMS compatible format;
- The adequacy of personnel and other resources necessary to perform the required surveys and other activities; and
- Assurances that it will comply with ongoing responsibility requirements specified in § 422.157(c) of our regulations.

Additionally, the accrediting organization must provide CMS the opportunity to observe its accreditation process on site at a managed care organization and must provide any other information that CMS requires to prepare for an onsite visit. These site visits will help to verify that the information presented in the application is correct and to make a determination on the application.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in that document. Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Authority: Sections 1852 and 1865 of the Social Security Act (42 U.S.C. 1395w–22 and 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 8, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicare Services.

[FR Doc. 06–2567 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1281–N]

Medicare Program; Public Meetings in Calendar Year 2006 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2006 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS.

These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. Discussion will be directed toward responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* The following are the 2006 HCPCS public meeting dates:

1. Tuesday, April 25, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Durable Medical Equipment (DME) and Accessories).
2. Wednesday, April 26, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Orthotics and Prosthetics).
3. Thursday, April 27, 2006, 9 a.m. to 12 p.m., e.d.s.t. (Orthotics and Prosthetics).
4. Thursday, May 4, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Supplies and Other).
5. Friday, May 5, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Supplies and Other).
6. Thursday, May 11, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).
7. Friday, May 12, 2006, 9 a.m. to 5 p.m., e.d.s.t. (Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).

The product category reported by the meeting participant may not be the same as that assigned by CMS. All meeting participants are advised to review the public meeting agenda at *http://www.cms.hhs.gov/medhcpcsgeninfo* which identifies our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and CMS' preliminary decision will be posted on our HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo* at least one month before each meeting.

Each meeting day will begin at 9 a.m. and end at 5 p.m., e.d.s.t., except for Thursday, April 27, 2006, the meeting will begin at 9 a.m. and end at 12 p.m., e.d.s.t.

ADDRESSES: The public meetings will be held in the auditorium at the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244.

Meeting Registration

Registration Procedures: Registration can be completed online at *http://www.cms.hhs.gov/medhcpcsgeninfo*. To register by telephone or e-mail, for the April 25, April 26, and April 27, 2006 meetings, contact Felicia Eggleston at *Eggleston.Felicia@cms.hhs.gov* or telephone (410) 786–9287; or Trish Brooks at *Brooks.Trish@cms.hhs.gov* or telephone (410) 786–4561.

For the May 4, May 5, May 11, and May 12, 2006 meetings, contact Jennifer Carver at *Carver.Jennifer@cms.hhs.gov* or telephone (410) 786–6610; or Gloria Knight at *Knight.Gloria@cms.hhs.gov* or telephone (410) 786–4598.

The following information must be provided when registering: Name, company name and address, telephone and fax numbers, e-mail address, and special needs information. A CMS staff member will confirm your registration by mail, e-mail, or fax.

Registration Deadlines: Individuals must register for each date they plan either to attend or to provide a presentation. For the April 25, 26, and

27 public meeting dates, the deadline for registration is April 18, 2006; for the May 4 and 5, 2006 public meeting, the deadline for registration is April 27, 2006; for the May 11 and 12 public meetings, the deadline for registration is May 4, 2006.

Primary Speakers: Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. In order to avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for each public meeting, as listed in section I–A titled ''Oral Presentation Procedures.'' The sum of all materials including presentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit for relevant studies published between the application deadline and the public meeting date, in which case, we would like a copy of the entire study as published as soon as possible.

These materials may be delivered by regular mail (postmark date no later than deadline date) or by e-mail to the respective HCPCS Public Meeting Coordinators listed under the section titled ''Meeting Registration.'' Individuals will need to provide 35 copies if materials are delivered by mail.

5-Minute Speakers: In order to afford the same opportunity to all attendees, there is no pre-registration for 5-minute speakers. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. They must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that will be addressed.

Web Site: Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 1 month before the first meeting date on the HCPCS Web site: *http://www.cms.hhs.gov/medhcpcsgeninfo*. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The same URL, the HCPCS Web site, also contains a document titled ''The Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding and payment determinations for all the products, supplies, and services that are coded in the HCPCS. A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2006.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

We published a notice in the November 23, 2001 **Federal Register** (66 FR 58743) providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the HCPCS workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as listed in section I–A titled ''Oral Presentation Procedures.'' Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any materials and presentations the meeting participant wishes CMS to consider.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

I. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers for each meeting. Meeting participants should arrive early since each meeting is anticipated to begin promptly at 9 a.m. Speakers need to arrive prepared and wait until it is their turn to speak. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

Individuals who are planning to provide an oral presentation must register as provided under the section titled ''Meeting Registration.'' Materials and writings that will be used in support of an oral presentation should be submitted to the HCPCS Public Meeting Coordinators as listed under the section titled ''Meeting Registration.''

The deadline for submitting materials and writings that will be used in support of an oral presentation are as follows: For the April 25, 26, and 27, 2006 public meetings, the deadline is April 11, 2006; for the May 4 and 5, 2006 public meetings, the deadline is April 20, 2006; for the May 11 and 12, 2006 meetings, the deadline is April 26, 2006. These materials may be delivered by regular mail (postmark date no later than deadline date) or by e-mail to the respective HCPCS Public Meeting Coordinators listed in the section titled ''Meeting Registration.'' Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes. In other words, the amount of time allotted to aggregate proposals might not be expanded exponentially by the number of requests.

We will post ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations'' on the official HCPCS Web site at least a month before the first public meeting in 2006 for all new public requests for revisions to the HCPCS. Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the section titled ''Meeting Registration'' and, at least 15 days before the meeting, contact the appropriate HCPCS Public Meeting

Coordinators, listed under the section titled ''Meeting Registration.''

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

The primary speakers and the 5-minute speakers must declare in their presentations at the meeting, as well as in their written summaries, whether they have any financial involvement with the manufacturers or competitors of any items or services being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments are welcome from all persons in attendance at a public meeting, regardless of whether they make an oral presentation. Written comments can be submitted either at the meeting or before the meeting via e-mail to *http://www.cms.hhs.gov/medhcpcsgeninfo* or via regular mail to the HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244. Written comments to this address are also accepted from the general public anytime up to the date of the public meeting at which a request is discussed. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

II. Security, Building, and Parking Guidelines

The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification may be denied access.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes before the convening of the meeting each day.

Security measures will also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

III. Special Accommodations

Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information when registering for the meeting.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 139hh).

Dated: March 10, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 06–2566 Filed 3–23–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of Child Care Subsidy Strategies.

OMB No.: New Collection.

Description: To conduct three experiments to test aspects of the child care subsidy system. One of these experiments will occur in Cook County, Illinois; one will occur in Washington State; and one will occur in Massachusetts.

Illinois. The State of Illinois has agreed to conduct an experiment in Cook County to test the impact of receiving a child care subsidy on parental employment and income and on the stability of child care arrangements. For the experiment, families with incomes above the current income eligibility ceiling who apply or reapply for subsidies will be approved to receive subsidies. In addition, the experiment will test the effects of a longer certification period by certifying eligibility for some families in the treatment group for six months and other families for one year. Families in the treatment group will retain eligibility for subsidies over the two-year study period, provided their income remains below the experimental limit, they reapply when their certification ends, and they comply with other requirements (*e.g.*, continue to work). Outcomes will be measured through administrative records and periodic interviews with parents.

Washington. In Washington State, the study will test a co-payment schedule that smoothes out the currently abrupt increases in co-payments that occur when a family moves from one income category to the next and reduces the co-payment burden for many families. Families that apply (or reapply) for subsidies and are determined to be eligible under current rules will be randomly assigned to the experimental co-payment schedule or the existing schedule. (Families with co-payments from the experimental schedule will either pay the same amount, or less, than families whose co-payments are calculated using the existing schedule.) Families will retain the same co-payment schedule for two years, provided they continue to be eligible for subsidies. Outcomes will be measured through analysis of administrative data and periodic interviews with parents.

Massachusetts. In Massachusetts, the study is an experimental test of the effectiveness of a developmental curriculum implemented in family child care homes. Family child care providers who serve subsidized and other low-income children and are linked to family child care networks will be randomly assigned to a treatment or control group. Providers in the treatment group will use the developmental curriculum and be trained through regular visits to the home by specially trained mentors. These providers will receive materials to use with children from 0 to 5 years

of age. Providers in the control group will receive the more general technical assistance and support visits that they currently receive. Impacts on provider behavior and the home environment will be measured through direct observations in the homes. Child assessments will be conducted through provider reports for the younger children and through standardized tests for children 30 months and older.

Respondents

Illinois. Parents who apply (or reapply) for subsidies and are eligible and agree to be in the study will be interviewed by telephone up to three times in the 24 months after they enter the study.

Washington State. Parents who apply (or reapply) for subsidies and are eligible and agree to be in the study will be interviewed by telephone up to three times over the 24 months of the study. Approximately 30 State employees working at the Department of Health and Human Services in the Division of Child Care and Early Learning or the Division of Community Service will be interviewed as part of the implementation study.

Massachusetts. Children will be assessed 7 months after implementing the curriculum, after 11 months, and after 23 months. Providers will be asked to respond to a brief survey 7 and 23 months after the study begins. Home visitors, who support providers in the treatment and control groups, will be asked to respond to a brief interview at 23 months.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Illinois parent survey	2,000	1.5	.58	1,740
Washington parent survey	2,000	1.5	.58	1,740
Washington process study interview	30	.5	.5	8
Massachusetts child assessments	700	1.5	.5	525
Massachusetts provider interview	350	1	.16	56
Massachusetts home visitor interview	32	.5	.16	3

Estimated Total Annual Burden Hours: 4,072.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: March 20, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–2867 Filed 3–23–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0414]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Food and Drug Administration Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 24, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Food and Drug Administration Rapid Response Surveys—(OMB Control Number 0910–0500)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA; to require user facilities to report device-related deaths directly to FDA and to manufacturers; and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in

situations involving imminent danger to health or gross deception of the consumer.

Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system. FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

In the**Federal Register** of October 25, 2005 (70 FR 61624), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30 (maximum)	6,000	0.5	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: March 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4262 Filed 3–23–06; 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: Voluntary Partner Surveys in the Health Resources and Services Administration—(OMB No. 0915–0212)—Extension

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) conducts voluntary customer surveys of its ''partners'' to assess strengths and weaknesses in program services. An extension of a generic approval is being requested from OMB to conduct these customer or partner satisfaction surveys. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, brief surveys of grantees to determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also be used to potential method to obtain input on services and training. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

The estimated response burden is as follows:

Instrument	Number of respondents	Responses per respondent	Hours per response	Total hour burden
In-class evaluations	40,000	1	.05	2,000
Surveys	12,000	1	.25	3,000
Focus groups	50	1	1.5	75

Instrument	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Total	52,050	1	.10	5,075

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 20, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–4217 Filed 3–23–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting at the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 18, 2006.

Open: 8 a.m. to 12 p.m.

Agenda: NCRR's Director's report and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: March 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2885 Filed 3–23–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetingsn will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, SLLP Medicated Regulations of Sperm Oolemma Binding.

Date: April 18, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mentored Research Career Development Award.

Date: April 18, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510. (301) 496–1485. *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation

Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2887 Filed 3–23–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stem Cell Selection.

Date: March 29, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892. (301) 435–1741. *pannierr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS-associated Malignancies.

Date: April 6, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS—Molecular and Cell Biology.

Date: April 7, 2006.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Treatment Technologies.

Date: April 14, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171. *rosenl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–2886 Filed 3–23–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Critical Infrastructure Partnership Advisory Council

AGENCY: Preparedness Directorate, Office of Infrastructure Protection, Department of Homeland Security.

ACTION: Committee management: notice of committee establishment.

SUMMARY: In order to facilitate an effective defense of our Nation's critical infrastructure, the Department of Homeland Security is creating the Critical Infrastructure Partnership Advisory Council. Pursuant to the Homeland Security Act of 2002, the Department is taking measures to facilitate strategic planning and effective discussion of critical infrastructure issues and to protect sensitive critical infrastructure information while also observing appropriate public disclosure procedures for the council.

Name of Committee: Critical Infrastructure Partnership Advisory Council (CIPAC).

FOR FURTHER INFORMATION CONTACT: Brett Lambo, Infrastructure Programs Office, Infrastructure Partnerships Division, Office of Infrastructure Protection, Preparedness Directorate, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–5311 or via e-mail at *brett.lambo@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

1. The Department's Relationship With Owners of Critical Infrastructure

Approximately 85 percent of this nation's critical infrastructure is owned by the private sector. *See, e.g.*, National Infrastructure Advisory Council Report, Sector Partnership Model Implementation: Final Report and Recommendations 6 (Oct. 11, 2005) (''NIAC Report''). Thus, in drafting the Homeland Security Act of 2002, Congress repeatedly stressed that the new Department of Homeland Security must have a close and highly effective relationship with the private sector owners of this infrastructure. *See, e.g.*, 6 U.S.C. 121(d)(11) (requiring consultation with ''private sector entities to ensure appropriate exchanges of information''); 6 U.S.C. 112(c) (requiring coordination with non-federal entities); *see also* Statement of Senator Joe Lieberman, Nov. 16, 2005 (''That's why we created an Infrastructure Protection division in the Department of Homeland Security which was the first of its kind at any federal agency. The point was that government needed to work with the private sector to make sure the systems so crucial to our way of life were adequately protected, and if attacked by terrorists or overwhelmed by natural forces, were able to recover quickly and restore services.'').

Congress explicitly instructed the Department to create an effective structure for sharing sensitive information with the private sector on infrastructure. Congress also explicitly mandated that the Department ''ensure the security and confidentiality'' of sensitive homeland security information, and gave the Department specific new authorities to protect such

information. *See* 6 U.S.C. 131 *et seq.*; 6 U.S.C. 451; 6 U.S.C. 482.

Over the past two years, the Department has consulted with Congress and with the Department's private and public sector partners and advisory committees to assess the strength and effectiveness of its relationships with private sector owners of critical infrastructure. The Government Accountability Office and others have reported that the private sector continues to resist sharing critical infrastructure information with the Department. *See, e.g.*, Govt. Acct. Off., Rep. No. GAO–03–1165T, Homeland Security: Information Sharing Responsibilities, Challenges, and Key Management Issues 26 (Sept. 17, 2003) (''As noted in our February 2003 report, some in the private sector expressed concerns about voluntarily sharing information with the government.''); Govt. Acct. Off., Rep. No. GAO–06–150, Homeland Security: DHS is Taking Steps to Enhance Security at Chemical Facilities, but Additional Authority is Needed 55–56 (Jan. 2006) (''While the industry wants to cooperate with DHS on its chemical security efforts, businesses are concerned that sensitive information could be released.''); Homeland Security Advisory Council Report, Homeland Security Information Sharing Between Government and the Private Sector 1 (August 10, 2005) (''HSAC Report'') (stating that effective cooperation between DHS and the private sector ''has been hampered by a variety of legal and procedural obstacles''); *compare* 148 Cong. Rec. S11002, S11001 (Nov. 14, 2002) (Senator Lieberman) (''We have to close vulnerabilities in those [critical infrastructure] systems before terrorists strike them. To do so, we have to be working with the private sector.'').

A number of advisory councils have recently re-assessed this problem and provided recommendations to the Department. For example, after a lengthy study in August of 2005, the Homeland Security Advisory Council (HSAC) opined:

> Fundamentally, the challenge of ensuring the resilient/reliable operation of critical infrastructure is unique, as it requires close communication and coordination between critical private sector entities and the Federal agencies charged with regulating them. Those communications, moreover, must remain non-public in order for those functions to be served. As specified in statute, these communications are to involve intelligence and law enforcement information, and are to serve warning, preventative and protective functions. Disclosing this sort of information would defeat the purpose of these communications by giving our nation's enemies information they could use to most effectively attack a particular infrastructure and cause cascading consequences across multiple infrastructures.

HSAC Report at 30.

2. Identifying Solutions

The Department's principal advisory committees specifically concluded that concerns regarding the Federal Advisory Committee Act (FACA) have frustrated vital communication between DHS and critical infrastructure sectors. This Act, when it applies, generally requires advisory committees to meet in open session and make publicly available associated written materials. 5 U.S.C. App. 2 sec. 10. It also requires a 15-day notice before any meeting may be ''closed'' to public attendance, a requirement which could prevent the Department from meeting on short notice to discuss sensitive information in an appropriate setting. The Act contains a number of exceptions to its general disclosure rules, but the applicability of those exceptions presents what many view as a significant litigation risk. *See, e.g.*, NIAC Report at 14. The Department's consultations with the Department of Justice have reinforced this conclusion.

The HSAC summed up the potential consequences of public disclosure of the sensitive information:

> Communications [between critical private sector entities and the Federal Government] must remain non-public * * * Disclosing this sort of information would defeat the purpose of those communications by giving our nation's enemies information they could use to most effectively attack a particular infrastructure and cause cascading consequences across multiple infrastructures.

HSAC Report at 30. Because of these concerns, the HSAC recommended that DHS consider using its authority under section 871 of the Homeland Security Act of 2002, 6 U.S.C. 451, to exempt critical infrastructure advisory committees from the FACA requirements. Section 871 provides the Secretary of Homeland Security with the authority to establish advisory committees and exempt them from the FACA. 6 U.S.C. 451(a). This authority allows the Department to enhance the incentives for providing the Department with information and recommendations that would not otherwise be provided. The National Infrastructure Advisory Council (NIAC) also considered this authority and drew a conclusion similar to the HSAC:

> Effective critical infrastructure protection requires the ability to have real time, continuous communications and open dialogue among the public and private partners in the model. The granting of the 871 exemption will establish a known and understood framework that facilitates the flow of advice and information concerning critical infrastructure protection. Not doing so would inhibit information sharing, risk publicly disclosing vulnerabilities, and suppress ad hoc communications during emergencies.

NIAC Report at 12. The NIAC went on to opine that exercising the exemption will have a direct effect: ''Interactions between the government and private sector will increase, and the flow of information will be much more efficient.'' *Id.* at 15. The NIAC found the exercise of the exemption authority to be ''essential'' for ''short- and long-term success.'' *Id.* Without exercising the exemption authority, according to the NIAC, DHS will not be able to accomplish its critical infrastructure protection and information sharing goals. *Id.* at 15–16; *cf.* Govt. Acct. Off., Rep. No. GAO–02–811T, National Preparedness: Integrating New and Existing Technology and Information Sharing into an Effective Homeland Security Strategy 9 (June 7, 2002) (''[I]n recent discussions with us, industry officials said that their chief concern in sharing information about vulnerabilities and attacks is disclosure of proprietary data.'').

3. Exercise of 871 Authority in a Manner Intended To Respect Principles of FACA

Despite many past requests, the Department has not previously exercised the authority Congress provided in Section 871. This reluctance has been due in part to a respect to the principles of open-government. Given mounting evidence that the use of this authority could improve the Department's ability to protect critical infrastructure and perform strategic planning, the Department is now invoking that authority *but*, as explained below, in a manner intended to preserve the principles of open government embraced by FACA. Out of concern for those principles, the Department has chosen to institute procedures calling for as much public disclosure as is consistent with homeland security goals.

The decisions announced in this Notice are consistent with longstanding efforts to increase our capacity to protect our critical infrastructure and key resources. Since September 11, 2001, numerous authoritative bodies—the Congress, advisory councils, and the 9/11 Commission among them—have stressed the importance of information sharing between the federal government and the private sector. *See, e.g.*, National Commission on Terrorist Attacks upon the United States, The

9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States 398 (authorized ed. 2004) (''Homeland security and national preparedness * * * often begins with the private sector.''); 148 Cong. Rec. S11405, S11414 (Nov. 19, 2002) (statement of Senator Lieberman stressing the importance of ''engaging the private sector'' in anti-terrorism efforts).

Protecting critical infrastructure and key resources (CI/KR) requires a comprehensive, effective, and collaborative partnership between all stakeholders. Collaboration among stakeholders must involve many activities: planning; coordination; security program implementation; operational activities related to critical infrastructure protection security measures, including incident response, recovery, and reconstitution from events both man-made and naturally occurring; and the sharing of information about threats, vulnerabilities, protective measures, best practices, and lessons learned.

An effective partnership must be predicated on the ability to have ongoing, immediate, and multi-directional communication and coordination between the CI/KR owners and operators and government, including under highly exigent circumstances. During the course of these activities, policy advice and recommendations may emerge and be provided to the Department of Homeland Security and Sector-Specific Agencies (SSAs). Consequently, the depth and breadth of the mission have unique requirements for comprehensive interactions. The CI/KR sectors are so vital to the nation's economy, public safety and confidence that it merits use of all necessary authorities to support their protection.

4. Establishment of the Critical Infrastructure Partnership Advisory Council

In furtherance of DHS' mission to safeguard CI/KR sectors, the Secretary has determined that the public interest requires the establishment of the CIPAC. The CIPAC will support implementation of the National Infrastructure Protection Plan (NIPP) and will help to effectuate the sector partnership model set forth in the NIPP. Specifically, the CIPAC will facilitate interaction among government representatives at the Federal, State, local, and tribal levels and representatives from the community of CI/KR owners and operators in each critical sector to engage in, among other things, planning; coordination; security program implementation; operational activities related to critical infrastructure protection security measures, including incident response, recovery, and reconstitution from events both man-made and naturally occurring; and the sharing of information about threats, vulnerabilities, protective measures, best practices, and lessons learned.

These activities require regular, ongoing, and multi-directional communication and coordination between CI/KR owners and operators and government, and to have the ability to do so under highly exigent circumstances. During the course of these activities, policy advice and recommendations may emerge and be provided to the Department of Homeland Security, the SSA for each sector identified in HSPD–7, and the other Federal departments and agencies supporting the critical infrastructure protection mission under the NIPP. These departments and agencies have responsibility for establishing and implementing Federal policy and managing Federal programs. The CIPAC has no authority to establish Federal policy or otherwise undertake inherently governmental functions.

Exemption from Public Law 92–463: In recognition of the highly-sensitive, and often confidential, nature of the subject matter involved in the activities of the CIPAC, under the authority of section 871 of the Homeland Security Act of 2002 (6 U.S.C. 451), the Secretary has decided to exempt the CIPAC from the requirements of Public Law 92–463 (5 U.S.C. App. 1 *et seq.*). The decision to exercise the exemption authority in section 871 will improve the homeland security partnership between government and the private sector. This exemption will support the free flow of information as those involved in protecting our critical infrastructure strive to meet the need for regular, interactive discussions concerning threats and vulnerabilities.

DHS recognizes and supports, however, the important principle of transparency as a foundation for public confidence in government. Accordingly, to the full extent compatible with the achievement of the critical infrastructure protection mission, DHS will, as a matter of policy, operate the CIPAC in a manner consistent with the spirit of this principle. DHS will maintain the CIPAC Executive Secretariat, which will manage and coordinate the activities of the CIPAC and maintain its records. While many meetings of the CIPAC will be closed to the public, meetings will be open as feasibly consistent with security objectives. Unless exigent circumstances arise, the CIPAC Executive Secretariat will provide public notice of when scheduled meetings of the CIPAC are expected to be held. Among its other responsibilities, the CIPAC Executive Secretariat will also develop and maintain on an ongoing basis a publicly-accessible Web site. The CIPAC Executive Secretariat will also prepare and, to the extent consistent with security objectives, publish on the Web site copies of meeting agendas and periodic reports on the CIPAC's accomplishments. The Executive Secretariat will also maintain the membership list for the CIPAC. DHS will support the administrative needs of the CIPAC through the CIPAC Executive Secretariat.

Membership and Structure: The CIPAC will be representative of the following CI/KR sectors identified in HSPD–7:

Food and Agriculture
Banking and Finance
Chemical
Commercial Facilities
Defense Industrial Base
Drinking Water and Waste Water
Dams
Emergency Services
Energy
Information Technology
Nuclear Reactors, Materials, and Waste
Postal and Shipping
Public Health and Healthcare
Telecommunications
Transportation Systems

The specific membership of the CIPAC will consist of: (a) The CI/KR owners and operators that are members of their respective sector's recognized Sector Coordinating Council (SCC), including their representative trade or equivalent organizations [''SCC CIPAC Members'']; and (b) Federal, State, local, and tribal governmental entities comprising the members of the Government Coordinating Council (GCC) for each sector, including their representative trade or equivalent organizations [''GCC CIPAC Members''].

CI/KR owners and operators are those entities that own and invest in infrastructure assets, in the systems and processes to secure them, and that are held responsible by the public for their operations and the response and their recovery when their infrastructures or key resources are disrupted.

SCCs are independent, self-governed bodies organized (or presently being organized) by the owners and operators of the nation's CI/KR within each of the critical sectors identified in HSPD–7 to enable them to coordinate among themselves on sector initiatives on critical infrastructure protection,

including response and recovery. The SCCs are broadly representative of the owners and operators within each CI/KR sector. While these councils are independent of government, they provide the CIPAC the ability to draw as representational a membership as possible from each sector and from across all sectors.

GCCs are interagency coordinating bodies that enable interagency and cross-jurisdictional coordination within each HSPD–7 sector. Each GCC is comprised of representatives from across various levels of government (*i.e.*, Federal, State, local, and tribal), as appropriate to the security landscape of each sector, and includes the Federal departments and agencies with a relevant interest in the sector. Each GCC is co-chaired by a representative from the designated SSA for the sector and by DHS' Assistant Secretary for Infrastructure Protection.

Appendix A sets forth a list of the present membership of the CIPAC from each sector as of this date, including all of the GCC CIPAC Members and the designated leadership of each SCC now in existence. Immediately following publication of this Notice in the **Federal Register**, the CIPAC Executive Secretariat will work with each SCC's leadership, and the SSA for each sector, to compile a complete list of the CIPAC SCC Members from each sector. Not later than April 24, 2006, the Department will publish a subsequent Notice identifying these additional members of the CIPAC. As new SCCs are formed and existing ones mature, the membership of the CIPAC will grow and change to accommodate changes in the membership of these bodies. DHS will publish quarterly updates in the **Federal Register** to announce changes in the membership of the CIPAC.

Membership Status: Non-Federal members of the CIPAC serve as representatives of their sectors, not as special government employees. Private sector members bear the cost of participating in the CIPAC.

Meetings: The CIPAC may meet as a whole or in any combination of subgroups that is most conducive to the effective conduct of its activities including, without limitation, in groups encompassing discrete sectors to address sector-specific issues and concerns (*e.g.*, a meeting of the members of the Food and Agriculture Sector GCC with their counterpart owners and operators from the sector's SCC), or in a small group with a single designated representative from each sector to address interdependencies and other cross-sectoral issues. As independent bodies, meetings consisting solely of members of the SCCs, or those consisting solely of members of the GCCs, shall not constitute meetings of the CIPAC. In addition, the CIPAC may establish informal working groups for the purpose of fact-finding, issue development, or other preliminary non-deliberative activities. Such activities in support of the CIPAC shall also be within the scope of the exemption noted above.

The CIPAC will meet at least quarterly to address matters within the scope of this Charter. The CIPAC Executive Secretariat will prepare summary minutes of CIPAC meetings; maintain calendars and agendas; coordinate preparation and review of communications with government entities; extend invitations to government officials and other expert consultants, as needed, to attend meetings; and other administrative functions as may be required.

Duration of Committee: Two years, subject to extension pursuant to section 871(b) of the Homeland Security Act of 2002 (6 U.S.C. 451(b)).

Responsible DHS Official: Nancy J. Wong, Director, Infrastructure Programs Office, Infrastructure Partnerships Division, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–5349.

Dated: March 20, 2006.

Michael Chertoff,

Secretary.

Appendix A—Membership of the Critical Infrastructure Partnership Advisory Council

Leadership of Existing SCCs:

Association of American Railroads
Cellular Telecommunications & Internet Association
Computer Sciences Corporation
Constellation Generation Group
Depository Trust and Clearing Corp.
Duke Energy
DuPont
Exelon Corporation
FedEx Corporation
Greenville Water System
Independent Electricity System Operator, Ontario, Canada
International Association of Fire Chiefs
International Dairy Foods Association
Madden & Patton, LLC
National Cattleman's Beef Association
National Food Processors Association
New Jersey Transit
New York City Department of Environmental Protection
NiSource Pipelines
Northwestern Hospital
Pacific Gas and Electric Co.
The Real Estate Roundtable
Telecommunications Industry Association
U.S. Telecom Association
United States Postal Service
Valero Energy Corporation
VeriSign
Xcel Energy

Federal, State, local, tribal and quasi-governmental entities, or their designated representative trade or equivalent associations, identified as members of existing GCCs:

American Red Cross
Association of Food and Drug Officials
North American Securities Administration Association
Association of State and Interstate Water Pollution Control Administrators
Association of State and Territorial Health Officials
Association of State Drinking Water Administrators
Commodity Futures Trading Commission
Conference of State Bank Supervisors
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
Federal Housing Finance Board
Federal Reserve Bank of New York
Federal Reserve Board
Interagency Security Committee
Intertribal Agriculture Council
National Association of County and City Health Officials
National Association of Departments of Agriculture
National Association of State Chief Information Officers
National Association of State Credit Union Supervisors
National Credit Union Administration
Nuclear Regulatory Commission
Securities Investor Protection Corporation
Tennessee Valley Authority
United States Army Corps of Engineers
United States Department of Agriculture
United States Department of Commerce
United States Department of Defense
United States Department of Education
United States Department of Energy
United States Department of Health and Human Services
United States Department of Homeland Security
United States Department of Housing and Urban Development
United States Department of Interior
United States Department of Justice
United States Department of Labor
United States Department of Transportation
United States Department of the Treasury
United States Environmental Protection Agency
United States National Archives and Records Administration
United States Securities and Exchange Commission

[FR Doc. 06–2892 Filed 3–23–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop: Transparency and Accountability: The Use of Personal Information Within the Government

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice announcing public workshop.

SUMMARY: The Department of Homeland Security Privacy Office will host a public workshop, ''Transparency and Accountability: The Use of Personal Information within the Government,'' to explore the concept of public notices and freedom of information frameworks.

DATES: The workshop will be held on Wednesday, April 5, 2006, in Washington, DC from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The Privacy Workshop will be held in the Horizon Ballroom at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Kathleen Kavanaugh, Privacy Office, Department of Homeland Security, Arlington, VA, 22202 by telephone (571) 227–3813, by facsimile (571) 227–4171, or by e-mail *privacyworkshop@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Privacy Office is holding a public workshop to explore comparative government frameworks on transparency and accountability. The program will be organized into three panel discussions that will allow for presentation of a broad range of perspectives provided by experts from United States and foreign governments. In addition to the panel discussions, time will be allotted during the workshop for questions and comments from the audience.

The program will begin with a discussion of privacy notices as a transparency tool, followed by a discussion of the Freedom of Information Act (FOIA), and in particular, how the law has provided accountability on government use of personal information. The workshop will conclude with a comparison of international freedom of information laws. The workshop is open to the public and there is no fee for attendance. For general security purposes, the Ronald Reagan Building requires that all attendees show a valid form of photo identification, such as a driver's license, to enter the building.

The Privacy Office will post additional information about the workshop, including a detailed agenda, on the DHS Privacy Office Web site at *http://www.dhs.gov/privacy* prior to the event. A transcript of the workshop will be posted shortly after the workshop.

Dated: March 15, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Chief Freedom of Information Officer.

[FR Doc. E6–4227 Filed 3–23–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Tuna—Tariff-Rate Quota; The Tariff-Rate Quota for Calendar Year 2006, on Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2006.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2006.

DATES: *Effective Dates:* The 2006 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile Enforcement and Operations Division, Trade Compliance and Facilitation, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229, (202) 344–2650.

Background

It has been determined that 19,484,313 kilograms of tuna in air-tight containers may be entered and withdrawn from warehouse for consumption during the Calendar Year 2006, at the rate of 6 percent ad valorem under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 20, 2006.

William S. Heffelfinger III,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–4318 Filed 3–23–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: The National Fire Incident Reporting System (NFIRS) [1] v5.0.

OMB Number: 1660–0069.

Abstract: NFIRS provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and local levels. Data analysis helps local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working.

Affected Public: Federal, State, and local governments.

Number of Respondents: 17,000 fire departments.

Estimated Time per Respondent: Average response time per incident is 1.63 hours (98 minutes) for manual submissions and .66 hours (40 minutes) for electronic submissions. Since the

[1] The National Fire Incident Reporting System is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this data collection will be transferred to the Preparedness Directorate.

estimated time per respondent varies depending on the number and type of incidents being reported and the choice of submission mode, the range for completing all forms/modules is 1.25 hours–12 hours and .5 hours–4.75 hours for manual and electronic submissions, respectively.

Estimated Total Annual Burden Hours: 7,583,585 hours.

Frequency of Response: Occasionally/Once per incidence report.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 8, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–4290 Filed 3–23–06; 8:45 am]

BILLING CODE 9010–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Flood Insurance Policy Acquisition and Retention Among Recipients of Federal Assistance Study.

OMB Number: 1660–NW19.

Abstract: This survey will collect information on flood insurance purchasing patterns among property owners in communities with high densities of disaster recipients. Data findings will be used to develop strategies to improve compliance with flood insurance regulations.

Affected Public: Individuals and Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 20 minutes or .33 hour.

Estimated Total Annual Burden Hours: 400 hours.

Frequency of Response: One-time only.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 8, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–4291 Filed 3–23–06; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Reimbursement for Cost of Fighting Fire on Federal Property.

OMB Number: 1660–0014.

Abstract: The [1] Federal Emergency Management Agency (FEMA) Director; the Administrator of the United States Fire Administration (USFA); and the United States Treasury will use the information to ensure proper expenditure of Federal funds. Once a claim is received, a copy of FEMA determination and the claim is forwarded to the Treasury Department. The Treasury Department will pay for fire services or its parent jurisdiction for any moneys in the treasurer subject to reimbursement, to the Federal department or agency under whose jurisdiction the fire occurred.

Affected Public: Federal Government, and State, Local or Tribal Government.

Number of Respondents: 4.

Estimated Time per Respondent: 1.5.

Estimated Total Annual Burden Hours: 24 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records

[1] The Reimbursement for Cost of Fighting Fire on Federal Property program is currently being transferred to the newly created U.S. Fire Administration of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this data collection will be transferred to the Preparedness Directorate.

Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 17, 2006.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–4293 Filed 3–23–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1629–DR]

Nevada; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA–1629–DR), dated February 3, 2006, and related determinations.

DATES: *Effective Date:* March 16, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nevada is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 3, 2006: Elko County for Public Assistance.

(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,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4296 Filed 3–23–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1624–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

DATES: EFFECTIVE DATE: March 16, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 2006:

The counties of Anderson, Bastrop, Deaf Smith, and Parker for Individual Assistance (already designated for Public Assistance Category B (emergency protective measures), subject to subsequent designation by FEMA for reimbursement.)

(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,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4295 Filed 3–23–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–12]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Audrey Ormerod, Headquarters, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310; (703) 601–2520; ENERGY: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–0072; GSA: Mr. John Kelly, Acting Deputy. Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mr. Warren Meekins, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: March 16, 2006.

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for March 24, 2006

Suitable/Available Properties

Buildings (by State)

Georgia

Bldg. 01150
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610037
Status: Excess
Comment: 137 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01151
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610038
Status: Excess
Comment: 78 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01153
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610039
Status: Excess
Comment: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610048
Status: Excess
Comment: 80 sq. ft., most recent use—scale house, off-site use only

Bldg. 08032
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610051
Status: Excess
Comment: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

North Carolina

Ft. Johnston Family Housing Area
E. Moore/Ft. Johnston Place
Southport Co: Brunswick NC 28461–
Landholding Agency: GSA
Property Number: 54200610012
Status: Excess
Comment: 7994 sq. ft. includes residence, duplexes, tennis courts, service bldg., garage, present of asbestos/lead paint, National Register of Historic Places
GSA Number: 4–D–NC–0748

Suitable/Unavailable Properties

Buildings (by State)

Georgia

Bldg. 01243
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610040
Status: Excess
Comment: 1258 sq. ft., most recent use—ref/ac facility, off-site use only

Bldg. 01244
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610041
Status: Excess
Comment: 4096 sq. ft., presence of asbestos, most recent use—hdqts. facility, off-site use only

Bldg. 01318
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200610042
Status: Excess
Comment: 1500 sq. ft., most recent use—storage, off-site use only

Bldg. 00612
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610043
Status: Excess
Comment: 5298 sq. ft., needs rehab, most recent use—health clinic, off-site use only

Bldg. 00614
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610044
Status: Excess
Comment: 10,157 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00618
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610045
Status: Excess
Comment: 6137 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00628
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610046
Status: Excess
Comment: 10,050 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 01079
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army

Property Number: 21200610047
Status: Excess
Comment: 7680 sq. ft., most recent use—range/target house, off-site use only

Bldg. 07901
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610049
Status: Excess
Comment: 4800 sq. ft., most recent use—range support, off-site use only

Bldg. 08031
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610050
Status: Excess
Comment: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08081
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610052
Status: Excess
Comment: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08252
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200610053
Status: Excess
Comment: 145 sq. ft., most recent use—control tower, off-site use only

Unsuitable Properties

Buildings (by State)

California

Indian Creek Tullis Property
Hwy 299
Douglas City Co: Trinity CA 96024–0162
Location: Republication
Landholding Agency: GSA
Property Number: 54200540017
Status: Surplus
Reason: Floodway
GSA Number: 9–I–CA–1652

Bldgs. 31926, 31927, 31928
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200610058
Status: Excess
Reason: Extensive deterioration

Bldg. 41326
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200610059
Status: Excess
Reason: Extensive deterioration

Bldg. 41816
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200610060
Status: Excess
Reason: Extensive deterioration

Indiana

Hammond Depot
3200 S. Sheffield Ave.
Hammond Co: Lake IN
Landholding Agency: GSA
Property Number: 54200610013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 1–G–IN–600

New Haven Deport
15411 Dawkins Road
New Haven Co: IN 46774–
Landholding Agency: GSA
Property Number: 54200610014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 1–G–IN–600

Maine

Bldg. A38
Portsmouth Naval Shipyard
Kittery Co: York ME 03804–
Landholding Agency: Navy
Property Number: 77200610062
Status: Excess
Reason: Secured Area

Quarters U
Portsmouth Naval Shipyard
Kittery Co: York ME 03804–
Landholding Agency: Navy
Property Number: 77200610063
Status: Excess
Reason: Secured Area

Maryland

Curtis Bay Depot
710 Ordnance Road
Baltimore Co: MD 21226–
Landholding Agency: GSA
Property Number: 54200610015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 4–G–MD–0619

Nevada

10 Bldgs.
Nevada Test Site
Mercury Co: Nye NV 89023–
Landholding Agency: Energy
Property Number: 41200610003
Status: Excess
Reason: Secured Area

New York

Binghamton Depot
1151 Hoyt Ave.
Binghamton Co: NY 13091–
Landholding Agency: GSA
Property Number: 54200610016
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–NY–0760

Scotia Depot
One Amsterdam Road
Scotia Co: NY 12302–
Landholding Agency: GSA
Property Number: 54200610017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 1–G–NY–0917

Voorheesville Depot
Route 201
Voorheesville Co: NY 12085–
Landholding Agency: GSA
Property Number: 54200610018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 1–G–NY–0917

Pennsylvania

Marietta Depot
Vinegar Ferry Road
Marietta Co: Lancaster PA 17547–
Landholding Agency: GSA
Property Number: 54200610019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material various contaminants
GSA Number: 4–G–PA–0672

Land (by State)

Hawaii

Portion, Lualualei
Access Road
Waianae Co: Honolulu HI 96792–
Landholding Agency: GSA
Property Number: 54200610011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–N–HI–628

[FR Doc. 06–2740 Filed 3–23–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Agency Information Collection

AGENCY: Office of Civil Rights, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Civil Rights, Office of the Secretary, Department of the Interior (DOI), announces that it has forwarded to the Office of Management and Budget (OMB) a proposed extension of the public information collection described below. Copies of the proposed information collection request may be obtained by contacting the Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget. A copy of the comments and suggestions should also be sent to the Clearance Officer.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 24, 2006, in order to be assured of consideration.

ADDRESSES: Send your written comments to Office of Management and Budget, Office of Information and

Regulatory Affairs, Attention, Department of the Interior Desk Officer, by fax to 202–395–6566, or by e-mail to *oira_docket@omb.eop.gov*. Send a copy of your written comments to Mercedes Flores, Department of the Interior, 1849 C Street, NW., MS–2607 MIB, Washington, DC 20240, or electronically to *Mercedes_Flores@ios.doi.gov*. Please mention that your comments concern the Applicant Background Survey, OMB control # 1091–0001.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Mercedes Flores, (202) 208–6120. The collection instrument is also available on the Internet at: *http://www.doi.gov/diversity/doc/di_1935.pdf.*

SUPPLEMENTARY INFORMATION:

I. Abstract

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in its current and future workforce. The job skills it will need are dispersed throughout its eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all of the Department's customers.

In order to determine if there are barriers in its recruitment and selection processes, DOI must track the demographic groups that apply for its jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with DOI's records management procedures.

II. Data

(1) *Title:* Applicant Background Survey.

OMB Control Number: 1091–0001.

Current Expiration Date: March 31, 2006.

Type of Review: Information Collection Renewal.

Affected Entities: Applicants for DOI jobs.

Estimated annual number of respondents: 535,160.

Frequency of response: Once per job application.

(2) Annual reporting and recordkeeping burden.

Average reporting burden per application: 3 minutes.

Total annual reporting: 26,758 hours.

(3) *Description of the need and use of the information:* This information is required to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of relevant labor pools and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

III. Request for Comments

Request for Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: March 16, 2006.

Sharon Eller,

Director, Office of Civil Rights.

[FR Doc. 06–2846 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–RE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan for Kirwin National Wildlife Refuge, Kirwin, KS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Kirwin National Wildlife Refuge (NWR) is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) and the National Environmental Policy Act of 1969, describes how the Service intends to manage this Refuge for the next 15 years.

DATES: Written comments must be received at the postal or electronic address listed below on or before April 24, 2006.

ADDRESSES: Please provide written comments to Toni Griffin, Planning Team Leader, Division of Refuge Planning, Branch of Comprehensive Conservation Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, or electronically to *toni_griffin@fws.gov*. A copy of the Draft CCP/EA may be obtained by writing to the U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 300, Lakewood, Colorado 80228–1807; or download from *http://mountain-prairie.fws.gov/planning*.

FOR FURTHER INFORMATION CONTACT: Craig Mowry, Refuge Manager, U.S. Fish

and Wildlife Service, Kirwin National Wildlife Refuge, 702 East Xavier Road, Kirwin, Kansas 67644; telephone: 785–543–6673; fax: 785–543–5464; or e-mail: *craig_mowry@fws.gov*.

SUPPLEMENTARY INFORMATION: Consisting of 10,778 acres, Kirwin NWR was established in 1954 as an overlay Refuge on a U.S. Bureau of Reclamation (Reclamation) irrigation and flood control reservoir. Reclamation owns the land and controls reservoir water levels. The Service staff manage all other activities on the land and water. The purpose of the Refuge is for the ''* * * conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon * * *'' 16 U.S.C. 715d (Fish and Wildlife Coordination Act), with an emphasis on migratory birds.

This Draft CCP/EA identifies and evaluates two alternatives for managing Kirwin NWR for the next 15 years. Alternative A, the No Action Alternative, proposes continuation of current management of the Refuge. The Refuge will continue to be managed in accordance with the current Memorandum of Agreement (MOA) between Reclamation and the Service; the Cooperative Agreement with the Kansas Department of Wildlife and Parks (KDWP); and the Kirwin Comprehensive Management Plan (CMP), completed in 1996. Alternative B (Proposed Action) emphasizes wildlife, habitat, and wildlife-dependent public use. This alternative fully strives to implement the Improvement Act, which directs that each refuge shall be managed to fulfill both the mission of the National Wildlife Refuge System and the individual purpose of the refuge. Under this alternative, management emphasis will be placed on wildlife and habitat management for migratory birds and species of conservation concern. Wildlife-dependent recreation uses (*i.e.*, hunting, fishing, wildlife observation, photography, interpretation, and environmental education) will be promoted and emphasized. Non-wildlife-dependent uses such as water skiing, jet skiing, personal watercrafts, camping, swimming, horseback riding, campfires, volleyball, basketball, power/speed boating, and fishing tournaments would be discontinued.

The Proposed Action was selected because it best meets the purpose and goals of Kirwin NWR, as well as the mission of the National Wildlife Refuge System. The Proposed Action will improve Refuge habitat to benefit migrating waterfowl, neotropical migrants, shore birds, and federally listed species. Habitat improvements will enhance the quality of wildlife-dependent public use programs by attracting more wildlife to the area. Additional wildlife-dependent public use programs will be added where feasible. Environmental education and partnerships will result in greater support of Kirwin NWR and the National Wildlife Refuge System. Cultural and historical resources will be protected.

Dated: August 12, 2006.

Sharon R. Rose,

Regional Director, Region 6, Denver, CO.

Editorial note: This document was received at the Office of the Federal Register March 21, 2006.

[FR Doc. E6–4265 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening and Widening/Expansion of a 5-Year Review of the West Indian Manatee (*Trichechus manatus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the amendment of an ongoing 5-year review of the West Indian manatee (*Trichechus manatus*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act). On April 14, 2005, we initiated a 5-year review only for the Florida manatee subpecies (*Trichechus manatus latirostris*) of this species. We now expand the scope of this 5-year review to include the entire species. We request that the public submit any applicable information on the West Indian manatee that has become available since its original listing. Based on the results of this 5-year review, we will make the requisite determination under section 4(c)(2)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than June 13, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address. Information may also be sent via e-mail to *manatee@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn Jennings at the above address, or at 904–232–2580, ext. 114.

SUPPLEMENTARY INFORMATION: We listed the Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian Manatee, as endangered in 1967 under the Endangered Species Preservation Act of 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). In 1970, we listed the West Indian manatee (*Trichechus manatus*) in our U.S. List of Endangered Foreign Fish and Wildlife by amending and adding names to the First List of Endangered Foreign Fish and Wildlife (Appendix A under 50 CFR Part 17. (35 FR 8491, June 2, 1970)). The earlier listing of the Florida manatee was incorporated into the listing of the West Indian manatee. The West Indian manatee is currently listed as an endangered species under the Act (16 U.S.C. 1531 *et seq.*) and the population is further protected as a depleted stock under the Marine Mammal Protection Act (16 U.S.C. 1361–1407).

Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species (List) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years to ensure that the listing classification of a species is accurate. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not the species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we determine that a change in classification is not warranted, the West Indian manatee will remain on the List under its current status. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review.

On April 14, 2005, (70 FR 19780), we initiated a 5-year review for the Florida manatee subspecies only. By this notice,

we announce that we are amending and reopening this 5-year review to include the entire West Indian manatee subspecies.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the manatee.

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include (A) species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for this 5-year review, you may submit your comments and materials to the U.S. Fish and Wildlife Service's Jacksonville, Florida Ecological Services Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES**).

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 2, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–4280 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1320–EL, WYW160394]

Notice of Availability (NOA) of a Draft Environmental Impact Statement (DEIS) for the Pit 14 Coal Lease-by-Application (LBA) and Federal Coal Notice of Hearing, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: NOA of the DEIS for the Pit 14 Coal LBA, a maintenance lease for Federal coal in the decertified Green River-Hamms Fork Coal Production Region, Wyoming and Notice of Public Hearing.

DATES: The DEIS will be available for review and comment for 60 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The Bureau of Land Management (BLM) can best use comments and resource information if they are submitted by, or before, close of business the day of the end of the comment and review period. If you are uncertain as to what constitutes acceptable comment format or when comments are due, please contact the Project Manager or the Rock Springs Field Office at the address below. The public hearing will be held at 2 p.m. MST, on May 10, 2006, at the BLM, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming, to solicit comments on the DEIS from the public on the proposed competitive sale of the Federal coal included in the Pit 14 LBA and on the fair market value and maximum economic recovery of the Federal coal included in the tract.

ADDRESSES: A copy of the DEIS was sent to affected Federal, State, and local government agencies and to interested parties. The document may also be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/nepadocs.htm.* Copies of the DEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Teri Deakins, Project Manager, BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901. Requests for information may be sent electronically to: *rock springs_wymail@blm.gov* with ''Attention: Pit 14 Coal Lease-by-Application DEIS Information Request'' in the subject line. Ms. Deakins may also be reached at (307) 352–0211.

SUPPLEMENTARY INFORMATION: Black Butte Coal Company (BBCC) filed a lease application with BLM to access Federal coal reserves located adjacent to their existing Black Butte Mine in Sweetwater County, Wyoming. The LBA tract is located approximately 28 miles southeast of Rock Springs, Wyoming. The LBA tract is composed of the following public lands and minerals.

T. 17 N., R. 101 W., 6th PM, Wyoming
Sec. 2, Lots 3, 4, SW¼NW¼; Sec. 4, Lots 1, 2, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼; Sec. 10, NW¼, N½SW¼;
T. 18 N., R. 101 W., 6th PM, Wyoming
Sec. 34, E½, E½NW¼, SW¼.

Containing 1399.48 acres, more or less.

BBCC estimates approximately 34.6 million tons of in-place coal reserves are present in the Upper Cretaceous Almond Formation within the project area. The project area contains the LBA tract and privately held lands and minerals. BLM will evaluate the volume and average quality of the coal reserves in the LBA portion of the project area as part of the fair market value determination process.

The BLM published its Notice of Intent to prepare an EIS for the Pit 14 Coal Lease-by-Application (Federal Coal Lease Application WYW160394) in the **Federal Register** on January 7, 2005. Based upon issues and concerns identified during scoping and during the development of National Environmental Policy Act (NEPA) analysis, the Pit 14 Coal Lease-by-Application DEIS focuses on individual and cumulative impacts to air quality, biological and physical resources, transportation, and socio-economics factors. In compliance with Section 7(c), of the Endangered Species Act, as amended, the DEIS includes a

discussion of endangered or threatened species which may be affected by the Proposed Action. Formal consultation with U.S. Fish and Wildlife Service was initiated for Colorado River fish species on November 10, 2005.

This DEIS assesses the effects of implementing the proposed action which is the leasing of the coal reserves in the LBA tract as a maintenance tract to the existing Black Butte Mine.

The Pit 14 Coal LBA DEIS analyzes two alternatives in detail:

1. Proposed Action. The alternative as proposed by BBCC analyses the impacts of leasing Federal coal and the impacts associated with surface mining.

2. No Action Alternative. This alternative would deny the coal lease as proposed.

Agency Preferred Alternative

BLM's preferred alternative is the Proposed Action. The Proposed Action is in conformance with the Green River Resource Management Plan.

The Black Butte Coal Mine started operations in the late 1970s and continues to operate today. Existing production is slowing because existing privately held and federally leased coal reserves are too deep to be economically recovered by conventional surface mining methods (draglines). As a result, additional mineable coal reserves are needed to meet production requirements of the company's customers including the Jim Bridger Power Plant to meet the growing regional demand for electricity.

How to Submit Comments

Comments must be submitted using one of the following methods:

1. Comments may be electronically mailed to *rock springs_wymail@blm.gov* with ''Attention: Pit 14 Coal Lease-by-Application'' in the subject line, and avoiding the use of special characters or any form of encryption. If you do not receive a confirmation from our system that your comment has been received, please contact Teri Deakins, Project Manager, Rock Springs Field Office, (307) 352–0211;

2. Written comments may be mailed directly or delivered to the BLM at: Project Manager, Pit 14 Coal LBA, Bureau of Land Management Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901;

3. Comments may be sent via telefax to the BLM, Attn: Teri Deakins, at (307) 352–0328.

4. Comments may be given at the public hearing to be held at 2 p.m. MST, on May 10, 2006, at the BLM, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming.

To be given consideration by BLM, all DEIS comments must include the commenter's name and street address.

BLM's practice is to make all comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address or both from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: January 13, 2006.

Robert A. Bennett,

State Director.

[FR Doc. 06–2599 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–06–5101–ER–K087; WYW–166510]

Notice of Intent To Prepare an Environmental Impact Statement for the Overland Pass Natural Gas Liquids Pipeline in Wyoming, Colorado, and Kansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and notice of public scoping meetings.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 and in response to a Right-of-Way (ROW) application filed by Williams Field Services Company (Williams), the Bureau of Land Management (BLM), Rawlins Field Office, announces its intention to prepare an EIS and conduct public scoping meetings. Williams proposes to construct an approximately 750-mile long, 20-inch diameter natural gas liquids (NGL) pipeline originating at existing facilities in Opal, Wyoming, and ending at existing NGL processing facilities in Conway, Kansas. Of the 750 miles, approximately 78 miles of the pipeline would not be located near existing pipelines.

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resource information are submitted within 45 days of publication of this notice. To provide the public an opportunity to review the proposal and project information, the BLM expects to hold at least four meetings.

The meetings will be conducted in an ''open house'' format in the evening with the BLM and project proponents available to explain project details and gather information from interested individuals or groups. BLM is proposing to host open houses in the following communities: Cheyenne and Rock Springs, Wyoming; Greeley, Colorado; and Hays, Kansas. The BLM will announce the exact dates, times, and locations for these meetings at least 15 days prior to the event. Announcements will be made by news release to the media, individual letter mailings, and posting on the BLM's Web site listed below, if it is available.

ADDRESSES: Please submit written comments or resource information to the Bureau of Land Management, Montrose Field Office, Tom Hurshman, Overland Pass Pipeline Project Manager, Bureau of Land Management, 2465 South Townsend, Montrose, CO 81401. Comments or resource information may also be submitted by facsimile to (970) 240–5367. Electronic mail may be sent to: *tom_hurshman@co.blm.gov.* Please write ''Overland Pass Pipeline Project'' in the subject line.

Documents pertinent to the ROW application may be examined at:

- Bureau of Land Management, Rawlins Field Office, P.O. Box 2407, 1300 N. Third Street, Rawlins, Wyoming 82301. Telephone (307) 328–4200; or
- Bureau of Land Management, Wyoming State Office, Public Room, 5353 Yellowstone Road, Cheyenne, WY 82003. Telephone (307) 775–6256.

Your response is important and will be considered in the environmental analysis process. If you do respond, we will keep you informed of the decision resulting from this analysis. Please note that public comments and information submitted regarding this project, including the names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the Montrose and Rawlins Field Offices during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except holidays). Individual respondents may request confidentiality. If you wish to withhold your name, e-mail address, or street address from public review or from disclosure under the Freedom of

Information Act, you must state this plainly at the beginning of your written 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.

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Bureau of Land Management Project Manager, 2465 South Townsend, Montrose, CO 81401. Mr. Hurshman may also be reached at (970) 240–5345, or by sending an electronic message to: *tom_hurshman@co.blm.gov.*

SUPPLEMENTARY INFORMATION: Williams has submitted an application for ROW grants across Federal lands to locate a 20-inch diameter pipeline that would be used to transport natural gas liquids from an existing facility in Opal, Wyoming, to an existing processing facility in Conway, Kansas, a length of approximately 750 miles. This proposed Overland Pass Pipeline route would traverse approximately 143.3 miles of federally-administered land in Wyoming and Colorado. In Wyoming, approximately 101.7 miles of the proposed pipeline location would cross public lands administered by three BLM Field Offices: Kemmerer, Rock Springs, and Rawlins. In addition, the proposed pipeline location crosses the following two units of the National Forest System administered by the United States Forest Service, Department of Agriculture. The proposed pipeline location includes approximately 1.2 miles of the Flaming Gorge National Recreation Area in Wyoming, and 39.7 miles of the Pawnee National Grassland north of Greeley, Colorado. No Federal lands in Kansas would be affected by this proposal.

The proposed route would generally follow the I–80 corridor through southern Wyoming, mainly along the Southern Star pipeline route. The proposed route proceeds in a southeasterly direction and enters Colorado in Weld County. From the Colorado border, the route would continue southeasterly into Kansas where it would continue eastward, paralleling the Southern Star Pipeline near Bushton, Kansas. Near Bushton, it would then parallel an existing BP Amoco pipeline to Williams' processing facilities in Mitchell and Conway, Kansas. At Conway, the transported natural gas liquids will be processed and distributed through the existing transportation infrastructure to consumer markets in the Midwest and Texas Gulf Coast.

Through public scoping, the BLM expects to identify various issues, potential impacts and mitigation measures, and alternatives to the proposed action. At present, the BLM has identified the following issues and concerns: Impacts to threatened, endangered, and sensitive species and their habitat; adverse impacts to visual resources; potential impacts to big game and other wildlife; land use conflicts; effect of the project on local and regional socioeconomic conditions; increased potential for introduction and spread of noxious weeds; and the ability to efficiently reclaim lands disturbed by pipeline construction or location.

The BLM will analyze the proposed action and no action alternatives, as well as other possible alternatives to the proposed pipeline and access routes. Your comments concerning the pipeline project as proposed and feasible alternative locations, possible mitigation measures, and any other information relevant to proposed action are encouraged. Any persons wishing to be added to a mailing list of interested parties can call or write to BLM, as described in this notice. Additional informational meetings may be conducted throughout the process to keep the public informed of the progress of the EIS.

Robert A. Bennett,

State Director.

[FR Doc. E6–4245 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ-TRST] Group No. 185, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice Of Filing Of Plat Of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 141 N., R. 39 W.

The plat of survey represents the dependent resurvey of the west boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 4, 5, 6, 7, 8 and 30, Township 141 North, Range 39 West, of the 5th Principal Meridian, in the state of Minnesota, and was accepted September 22, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 16, 2006.

Jerry L. Wahl,

Chief Cadastral Surveyor.

[FR Doc. E6–4282 Filed 3–23–06; 8:45 am]

BILLING CODE 4310– GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–00143).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 260, ''Outer Continental Shelf Oil and Gas Leasing.''

DATES: Submit written comments by May 23, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0143 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0143 in the subject line.

• Fax: 703–787–1093. Identify with Information Collection Number 1010–0143.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0143'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 260, Outer Continental Shelf Oil and Gas Leasing.

OMB Control Number: 1010–0143.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 8(a)(1) of the OCS Lands Act provides authority for the Secretary to offer leases under a variety of bidding systems. The regulations at 30 CFR part 260 describe the bidding systems, our joint bidding requirements, and royalty suspensions for certain leases. They encourage leasing competition through the use of appropriate bidding-system alternatives and a joint bidding ban among certain large companies. Also, these regulations implement the Secretary's authority to promote leasing interest in certain areas of the OCS through automatic suspension of royalties. The Minerals Management Service (MMS) administers this program for the Secretary.

Regulations under part 260 require lessees to notify MMS of their intention to begin production. Lessees must also request confirmation of the size of the royalty-suspension volume that applies to the pre-2001 eligible lease. The MMS uses the information collected to make decisions on the shares of the royalty-suspension volume that applies to multiple pre-2001 eligible leases on the same field. The information is used to ensure royalty suspension volume is properly allocated among constituent leases in a field. Respondents may request reconsideration of an assignment of their lease that has a qualifying well to an existing field or to a newly designated field. We will use the information to reconsider and adjust, if necessary, the initial field assignment for a lease. These decisions can be contentious because a favorable field assignment can save a lessee tens of millions of dollars in royalties. However, currently pending legislation may result in the elimination of this information collection.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552), and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 10 of the 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 1,603 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 260	Reporting and recordkeeping requirement	Hour burden
114(a); 124(a)	Request MMS to reconsider the field assignment of a lease	400.
114(c)	Notify MMS of intent to begin production; request confirmation of size of royalty-suspension volume.	0.5.
124(a)(1)	Submit written request to Director for reconsideration along w/Statement of Reason.	Exempt under 5 CFR 1320.4.*

*The requirements apply during the conduct of specific investigations.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be

withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: March 14, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–4319 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service (MMS).

ACTION: Notice summarizing OCS Civil Penalties Paid, January 1, 2005, through December 31, 2005.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 2005, through December 31, 2005, for violations of the OCS Lands Act (OCSLA). The goal of the MMS OCS Civil Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon (Program Coordinator), 703–787–1292.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCSLA Amendments of 1978. Subtitle B of OPA 90, titled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997, (62 FR 42668), MMS published new regulations implementing the civil penalty provisions of the OCSLA. Written in ''plain English,'' the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per violation, per day. Please note, subsequent to publishing the new regulations, MMS made several corrections and amendments, including the appeals procedures. These were published at 63 FR 42711, 8/11/98; 64 FR 9066, 2/24/99; 62 FR 9065, 2/24/99, and 64 FR 26257, 5/13/99.

On November 28, 2003, (68 FR 61622), MMS published a new regulation adjusting the civil penalty assessment to comply with the Department of Labor's Consumer Price Index. The amount is now $30,000 per violation per day.

Between August 18, 1990, and January 2006, MMS initiated 531 civil penalty reviews. Operators have paid 418 civil penalties for a total of $13,780,792 in fines. Seventy eight cases were dismissed; 5 cases were merged; and 30 cases are under review.

On September 1, 1997, the Associate Director of Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 2005, and December 31, 2005. Please note that the MMS published a direct final rule ((5/29/98), 63 FR 29477) that renumbers each section in 30 CFR part 250. A quarterly update of the list, along with additional information related to the renumbering of the regulations, is posted on the MMS Worldwide Web Home page, *http://www.mms.gov.*

2005 CIVIL/CRIMINAL PENALTIES SUMMARY, ALL PENALTIES PAID IN CALENDAR 2005 (01/01/2005–12/31/2005)

[The following acronyms are used in this table: PSL (pressure safety low); IP (intermediate pressure); ESD (emergency shutdown device); SCSSV (surface controlled subsurface safety valve); LSH (level safety high); HP (high pressure); BOP (blow out preventer); SSV (surface safety valve); PSHL (pressure safety high/low); AFFF (aqueous film forming foam); PSV (pressure safety valve); LSL (level safety low); INC (incident of non-compliance); H2S (Hydrogen Sulfide).]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
W & T Offshore, Inc., G–1997–026.	A burning operation was conducted without the issuance of a written authorization for the work and the site was not being monitored with a portable gas detector.	$40,000 01/18/05	
	12/07/96–12/07/96		250.52(b)
	12/07/96–12/07/96		250.52(d)(2)
Seneca Resources Corporation, G–1997–030.	The SSCSV (in a landing nipple) was not tested for one testing period (tested on 11/3/94 and then on 1/23/96.) Also, the pipeline shut down valve from West Delta 32C to West Delta 32A was found defective and left in service for 17 days.	$85,000 10/12/05	
	05/23/96–05/23/96		250.124(a)(1)(ii)
	05/23/96–05/23/96		250.154(b)(2)

2005 CIVIL/CRIMINAL PENALTIES SUMMARY, ALL PENALTIES PAID IN CALENDAR 2005 (01/01/2005–12/31/2005)—Continued

[The following acronyms are used in this table: PSL (pressure safety low); IP (intermediate pressure); ESD (emergency shutdown device); SCSSV (surface controlled subsurface safety valve); LSH (level safety high); HP (high pressure); BOP (blow out preventer); SSV (surface safety valve); PSHL (pressure safety high/low); AFFF (aqueous film forming foam); PSV (pressure safety valve); LSL (level safety low); INC (incident of non-compliance); H2S (Hydrogen Sulfide).]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Blue Dolphin Exploration Company, (Petroleum Offshore Professional Services), G–2000–059.	Tubing plugs on 8 wells not inspected for leakage within required timeframe. Electrical installations not maintained in accordance with API RP 500 & RP 14F. Crane inspection of 6/00 indicated that emergency shut down cable and boom angle indicator needed to be replaced; crane not taken out of service.	$24,000 09/22/05	
	04/02/99–10/03/00		250.804(a)(1)
	10/02/99–10/03/00		250.804(a)(1)
	10/04/00–10/04/00		250.114(c)
	06/14/00–10/04/00		250.108
Maritech, (Petroleum Offshore Professional Services), G–2003–016.	Approval was granted to install an SSCSV in lieu of an SSCSV in Satellite Well No. 1 with the condition that at the first sign of sand production the well would be shut-in immediately and the approval rescinded. Numerous occurrences of produced sand were not reported to the district and the well remained on production. The SSCSV was removed from the well and found to be damaged. It was reinstalled in the well which was not plugged or attended overnight.	$140,000 12/16/05	
	2/3/03–2/4/03		250.804(a)(1)(ii)
	11/5/02–2/4/03		250.801(h)(3)
Murphy Exploration & Production Company—USA, G–2004–011.	The PSL for the intermediate pressure IP Separator was found in bypass.	$14,000 02/01/05	
	04/05/04–04/06/04		250.803(c)(1)
Devon Louisiana Corporation, G–2004–012.	The isolation valves for two ESD Stations were found in the bypassed position, rendering the two ESD stations inoperable.	$10,000 03/15/05	
	04/16/04–04/16/04		250.803(c)(1)
Shell Offshore Inc., G–2004–013.	The surface controlled SCSSV was found blocked out service by the hydraulic control line closed at the isolation valve on the tree.	$27,000 03/02/05	
	06/16/04–06/24/04		250.803
Forest Oil Corporation, G–2004–014.	The LSH on sump tank was found bypassed at the safety system panel. The blocked out safety device was not flagged nor being monitored by personnel. Safety Device bypassed for 1 day.	$10,000 06/29/05	
	06/03/04–06/03/04		250.803(c)
ExxonMobil Corporation, G–2004–016.	A 4′ × 8′ section of top deck grating had been removed in order to facilitate a wireline unit removal operation. The area was not flagged or barricaded to warn personnel of the open area; and personnel working in the direct vicinity of the open hole were not wearing fall protection gear.	$10,000 04/19/05	
	04/26/04–04/26/04		33 CFR 142.42
Anadarko E&P Company LP, (Island Operators Co. Inc.), G–2004–019.	The main group device selector switches for both the HP separator (MBD 1050) and the IP separator (MBD 1100) were bypassed. The end devices were not flagged, nor were they being monitored.	$13,500 04/12/05	
	05/04/04–05/04/04		250.803
	05/04/04–05/04/04		250.803
Forest Oil Corporation, (Ensco Offshore Co.), G–2004–020.	An accident involving an injury occurred on 04/19/04 while the crew was changing the annular rubber. The operation was not performed in a safe manner, and an employee lowered through the rotary was injured when the BOP stack shifted.	$30,000 01/21/05	
	04/19/04–04/19/04		250.107(a)
Energy Partners, Ltd., G–2004–021.	SCSSV for Well F–3 was blocked out of service; not flagged nor being monitored. Safety Device blocked out of service for 9 days.	$9,000 04/12/05	
	12/07/03–12/15/03		250.803(c)
Forest Oil Corporation, G–2004–022.	Required safety equipment (smoke and/or thermal rate of rise detectors) for both the Company Man's Office/Bunkhouse and the Galley were inoperable.	$64,000 04/22/05	
	05/29/04–06/01/04		250.803(b)(9)
Apache Corporation, (Island Operators Co. Inc.), G–2004–024.	Pipeline Pump PSL bypassed and a failure to report casing pressure caused by a hole in the tubing.	$82,000 03/02/05	
	03/09/04–03/09/04		250.803
	09/23/03–02/13/04		250.517(c)

2005 CIVIL/CRIMINAL PENALTIES SUMMARY, ALL PENALTIES PAID IN CALENDAR 2005 (01/01/2005–12/31/2005)—Continued

[The following acronyms are used in this table: PSL (pressure safety low); IP (intermediate pressure); ESD (emergency shutdown device); SCSSV (surface controlled subsurface safety valve); LSH (level safety high); HP (high pressure); BOP (blow out preventer); SSV (surface safety valve); PSHL (pressure safety high/low); AFFF (aqueous film forming foam); PSV (pressure safety valve); LSL (level safety low); INC (incident of non-compliance); H2S (Hydrogen Sulfide).]

Operator name (contractor) and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Kerr-McGee Oil & Gas Corporation, G–2004–025.	The manual relay for the SSV was pinned and tie-wrapped out of service.	$7,500 04/18/05	
	07/16/03–07/16/03		250.803
Stone Energy Corporation, (Rowan Drilling), G–2004–028.	Failure to initiate prompt well control measures to control the influx of well formation fluids which entered the wellbore.	$20,000 05/25/05	
	08/08/04–08/08/04		250.107
Century Exploration New Orleans, Inc., (Island Operators Co., Inc.), G–2004–029.	The AFFF had not been replaced after failing an analysis test ...	$10,000 04/28/05	
	09/28/04–09/28/04		33 CFR 146.15
Forest Oil Corporation, (Baker Energy, Inc.), G–2004–030.	The 150 gal AFFF Fire Boss Unit was not being maintained in an operable condition since the effectiveness of the foam was not being monitored.	$20,000 04/22/05	
	10/13/04–10/13/04		250.803(b)(8)
Bois d'Arc Offshore Ltd., (Eagle Consultants), G–2004–031.	The Platform was producing without an operable firewater system for 2 days.	$20,000 05/24/05	
	07/20/04–07/21/04		250.803(b)(8)
Newfield Exploration Company, G–2004–032.	The PSVs on Compressor Nos. 1 & 2 were isolated, rendering them inoperable; and there were no fusible loop material (TSE) over the engine for Compressor No. 1.	$40,000 07/22/05	
	08/18/04–08/21/04		250.803(c)
	08/18/04–08/21/04		250.802(b)
	08/21/04–08/21/04		250.803(c)
Apache Corporation, G–2005–004.	Open holes in cellar deck and +10 levels without appropriate barricade to prevent personnel from falling into the holes.	$15,000 07/01/05	
	11/09/04–11/09/04		33 CFR 142.87
Pogo Producing Company, G–2005–005.	Bypassed LSL on the test separator with the upper and lower isolation valves in the closed position.	$10,000 09/27/05	
	08/05/04–08/05/04		250.803
Newfield Exploration Company, (Rowan Drilling), G–2005–006.	Personnel were observed working without fall protection gear while engaged in an activity where there was a hazard of falling 10 or more feet.	$10,000 07/22/05	
	11/23/04–11/23/04		250.107
Apache Corporation, (Dolphin Service Inc.), G–2005–009.	An employee fell 45 feet into the Gulf when he stepped through the open hole created by the removal of wooden boards which had been placed over the open hole to protect it.	$25,000 07/01/05	
	12/20/04–12/20/04		250.107(a)
The Houston Exploration Company, (Grasso Production Management), G–2005–010.	The Gas Detector Head (ASH–10) for gas compressor 802 was found inoperable due to the sensor being disconnected from the main circuit board panel. The blocked out safety device was not flagged nor being monitored by personnel. Safety Device bypassed for 1 day.	$10,000 11/28/05	
	01/03/05–01/03/05		250.803(c)
Bois d'Arc Offshore Ltd., (Eagle Consultants), G–2005–011.	The Burner Safety Low for the fuel to the Glycol Reboiler, EAW–921, and the Temperature safety High for the media and the stack were in by-pass. The blocked out safety devices were not flagged nor being monitored by personnel. Safety Devices bypassed for 1 day.	$10,000 09/15/05	
	03/02/05–03/02/05		250.803(c)

Total Penalties Paid: 01/01/2005–12/31/2005
26 Cases: ($756,000)

The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

Dated: February 24, 2006.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. E6–4303 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper Rio Grande Basin Water Operations Review, NM; Notice of Extension

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period for thirty days.

SUMMARY: Notice is hereby given that the comment period for the Draft Environmental Impact Statement (DEIS) for the Upper Rio Grande Water Operations Review, DES–05–80, is extended an additional 30 days to April 20, 2006.

DATES: The end of the public comment period, as noted in the **Federal Register** (71 FR 3323) on January 20, 2006, was March 21, 2006. The public comment period is now extended to April 20, 2006.

ADDRESSES: Written comments on the DEIS should be addressed to Valda Terauds, ALB–707, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway, NW., Suite 100, Albuquerque, New Mexico 87102; faxogram (505) 462–3593; e-mail: *vterauds@uc.usbr.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Valda Terauds, Resource Management Planner, (505) 462–3584.

Dated: March 7, 2006.

Roger Slater,

Acting Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. E6–4306 Filed 3–23–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 13, 2005, Cerilliant API Services, LLC, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II; and by letter dated September 2, 2005, to modify its name to Austin Pharma, LLC.

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinois (7370)	I
3,4–Methylenedioxyamphetamine (7400).	I
3,4–Methylenedioxy-N-ethylamphetamine (7404).	I
3,4–Methylenedioxymethamphetamine (7405).	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine (9056)	I
Codeine methylbromide (9070)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine-N-oxide (9307)	I
Alphamethadol (9605)	I
Normethadone (9635)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 23, 2006.

Dated: March 20, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–4302 Filed 3–23–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 17, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316

(this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Lead in General Industry (29 CFR 1910.1025).

OMB Number: 1218–0092.

Frequency: On occasion; Quarterly; Semi-annually; and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 62,357.

Number of Annual Responses: 4,068,503.

Estimated Time per Response: Ranges from 1 minute to notify an employee of their right to seek a second medical opinion to 2 hours for an employee to receive a medical examination.

Total Burden Hours: 1,242,562.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $139,869,058.

Description: The purpose of 29 CFR 1910.1025 and its information collection requirements is to provide protection for employees from the adverse effects associated with occupational exposure to the carcinogen, lead. Employers must monitor employee exposure to lead, provide medical surveillance, train employees about the hazards of lead, and establish and maintain accurate records of employee exposure to lead. These records are used by employers, employees, physicians, and the Government to ensure that employees are not being harmed by exposure to lead.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Lead in Construction Standard (29 CFR 1926.62).

OMB Number: 1218–0189.

Frequency: On occasion; Quarterly; Semi-annually; and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 147,073.

Number of Annual Responses: 5,782,074.

Estimated Time per Response: Ranges from 1 minute to notify an employee of their right to seek a second medical opinion to 8 hours to develop a written compliance program.

Total Burden Hours: 1,560,717.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $68,576,673.

Description: 29 CFR 1926.62 requires employers to train employees about the hazards of lead, monitor employee exposure, to provide medical surveillance, and maintain accurate records of employee exposure to lead. These records are used by employers, employees, physicians and the Government to ensure that employees are not harmed by exposure to lead in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–4271 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 17, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New Collection.

Title: Generic Solicitation for Grant Applications (SGAs).

OMB Number: 1205–0NEW.

Frequency: On occasion and annually.

Affected Public: State, Local or Tribal Government; Business or other for-profit; Not-for-profit institutions.

Type of Response: Reporting.

Number of Respondents: 50.

Annual Responses: 5,750.

Average Response time: 20.75 hours.

Total Annual Burden Hours: 119,312.

Total Annualized Capital/Startup Costs: $2,836,058.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Requesting approval for a generic Solicitation for Grant Application form for information collection requirements for SGAs that extend beyond what is collected on currently approved standard forms. OMB approval of this generic SGA form will assist the Department to carry out its responsibilities under the Paperwork Reduction Act by accurately accounting for the public burden associated with grant applications through promoting a common structure for reporting the

information collection requirements contained in DOL's SGAs.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6–4273 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 21, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Roof Control Plans.

OMB Number: 1219–0004.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 627.

Number of Annual Responses: 2,465.

Average Response Time: 24 hours for new plans; 5 hours to revise a plan; and 5 minutes to plot each unplanned roof fall, rib fall, and coal rock burst on a mine map when such incidents meet the criteria specified in 30 CFR 75.223(b).

Total Annual Burden Hours: 6,919.

Total Annualized Capital/startup Costs: $0.

Total Annual Costs (Operating/maintaining Systems or Purchasing Services): $4,630.

Description: Section 302(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) 30 U.S.C. 846, requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be first approved by the Secretary of Labor (Secretary) before implementation by the operator. The plan must show the type of support and spacing approved by the Secretary, and the plan must be reviewed at least every six months by the Secretary.

Under 30 CFR 75.220 each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

Under 30 CFR 75.221, the information required to be submitted and approved in the roof control plan includes the following: (1) The name and address of the company; (2) the name, address, mine identification number and location of the mine; (3) the name and title of the company official responsible for the plan; (4) a description of the mine strata; (5) a description and drawings of the sequence of installation and spacing of supports for each method of mining used; (6) the maximum distance that an ATRS system is to be set beyond the last row of permanent support (if appropriate); (7) specifications and installation procedures for liners or arches (if appropriate); (8) drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars; (9) a list of all support materials required to be used in the roof, face and rib control system; (10) the intervals at which test holds will be drilled (if appropriate); and (11) a description of the methods to be used for the protection of persons. Under 30 CFR 75.215, the roof control plan for each longwall mining section is required to specify the methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall and the procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Roof control plans are evaluated by Mine Safety and Health Administration (MSHA) specialists on the basis of the criteria set forth in 30 CFR 75.222. The District Manager may require additional measures in plans and may approve roof control plans that do not conform to the applicable criteria in this section, provided that effective control of the roof, face, and ribs can be maintained.

Under 30 CFR 75.223, a mine operator is required to propose revisions to the roof control plan when conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts, or when accident and injury experience at the mine indicates the plan is inadequate. Mine operators are also required to plot on a mine map each unplanned roof or rib fall and coal or rock burst that occurs in the active workings when certain criteria are met. The regulation also requires MSHA to review the plan every 6 months.

Roof Control plans provide the means to instruct miners, who install roof supports, in the proper use and placement of roof supports. The plan also provides a reference for mine supervisors to ensure that the mine is in compliance with the MSHA regulations relating to roof control. Roof control plans are evaluated by MSHA personnel to assure that mine operators have complied with the regulatory provisions outlined in 30 CFR 75.202 through 75.214. MSHA inspectors also refer to the plans when they are conducting safety and health inspections at the mines. Approved roof control plans from the different MSHA coal mine safety and health districts are reviewed by MSHA roof control specialists to determine compliance with the regulations and to evaluate the roof and rib support methods used to provide a safe working environment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–4275 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,515]

Ablest Staffing Services Working On-Site at Wellington Leisure Products, Granite Quarry, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Ablest Staffing Services, Working On-Site at Wellington Leisure Products, Granite Quarry, North Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,515; Ablest Staffing Services, Working On-Site at Wellington Leisure Products Granite Quarry, North Carolina, (March 16, 2006).

Signed at Washington, DC this 17th day of February 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4285 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,406]

Adobe Air, Inc., Phoenix, AZ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Adobe Air, Inc., Phoenix, Arizona. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,406; Adobe Air, Inc., Phoenix, Arizona (March 13, 2006.)

Signed at Washington, DC this 14th day of March 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4283 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,663]

Classic Print Products, Inc., Burlington, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Classic Print Products, Inc., Burlington, North Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,663; Classic Print Products, Inc., Burlington, North Carolina (March 16, 2006).

Signed at Washington, DC this 17th day of February 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4287 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,794]

Cognis Corporation Cincinnati, OH; Notice of Negative Determination on Reconsideration

On November 29, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Cognis Corporation, Cincinnati, Ohio. The Department's Notice was published in the **Federal Register** on March 2, 2006 (71 FR 10708).

The negative determination was based on the findings that there was no shift of specialty chemical production abroad by the subject firm and no increased imports of specialty chemicals during the relevant period. Workers produce specialty chemicals, including fatty acids, glycerin, and ozone acids, and are not separately identifiable by product line.

In the request for reconsideration, the United Steelworkers of America, Local 14340, asserted that workers produced ''certain oleo chemical products and fatty alcohol products which are sold to other companies for use as ingredients or additives in those companies' products such as cosmetics, soaps, tires, and paints.'' The Union also asserted that increased imports of articles like or directly competitive with those produced by the subject firm had contributed to the workers' separations.

During the reconsideration investigation, the Department contacted the Union and the subject company to ascertain what product was made by the worker group and the reason(s) for the worker separations. The product at issue are APG surfactants.

According to the Union and the company official, a major customer reformulated its product to use a blend of chemicals that has the same effect as the chemical purchased from the subject firm, alkyl polyglycoside (APG) surfactants, and, as a result, ceased purchasing APG surfactants from the subject firm. APG surfactants are used commercially in cleaning products.

During the reconsideration investigation, the Department collected sales, production, and import data from the subject company regarding APG surfactants and conducted a survey of the major declining customer regarding its purchases of APG surfactants during 2003, 2004, January through August 2004, and January through August 2005.

A careful review of the information provided by the subject company revealed reduced production of APG surfactants, no increased imports of APG surfactants, and no shift of APG surfactants production abroad during the relevant period.

According to the customer, there is no one chemical which is like or directly competitive with APG surfactants because of its specific characteristics. The survey result revealed that the customer did not have any import purchases of APG surfactants during the relevant period.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Cognis Corporation, Cincinnati, Ohio.

Signed at Washington, DC this 14th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4297 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of February 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX–54 TAA

[Petitions instituted between 2/27/06 and 3/3/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58911	IBM (State)	San Jose, CA	02/27/06	02/06/06
58912	Boeing Company (The) (Union)	Melbourne, AR	02/27/06	02/24/06
58913	Centurty Furniture (State)	Hickory, NC	02/27/06	02/24/06
58914	Powertrain Controls Division (Comp)	Marshall, MI	02/27/06	02/24/06
58915	Alba Health, LLC (State)	Knoxville, TN	02/27/06	02/24/06
58916	Sony Electronics (Comp)	San Diego, CA	02/27/06	02/15/06
58917	Mid-South Electronics (Comp)	Annville, KY	02/27/06	02/20/06
58918	Perlos, Inc. (Comp)	Ft. Worth, TX	02/27/06	02/23/06
58919	Western Textile Products Company (Comp)	Piedmont, SC	03/01/06	02/28/06
58920	Rutgers Organics Corporation (Comp)	State College, PA	03/01/06	02/28/06
58921	Tawas Resources (Comp)	Tawas City, MI	03/01/06	02/28/06
58922	Radici Fabrics USA (State)	Fall River, MA	03/01/06	02/14/06
58923	Thermo Black Clawson, Inc. (State)	Rayville, LA	03/01/06	02/27/06
58924	Miller Desk, Inc. (Comp)	High Point, NC	03/01/06	02/03/06
58925	Eaton Corporation (Comp)	Everett, WA	03/01/06	02/14/06
58926	Triangle Suspension Systems (Wkrs)	Dubois, PA	03/01/06	02/27/06
58927	Magna Art Industries (Wkrs)	Cape Girardeau, MO	03/01/06	02/20/06
58928	ITT Jabsco Worldwide-Flojet (Comp)	Foothill Ranch, CA	03/01/06	02/27/06
58929	Milprint (USW)	Denmark, WI	03/01/06	02/27/06
58930	CTB McGraw Hill (State)	Monterey, CA	03/01/06	02/27/06
58931	Johnson Electric Automotive (Wkrs)	Brownsville, TX	03/01/06	02/28/06
58932	Craft-Co Enterprises, Inc. (Comp)	Morton, MS	03/01/06	02/28/06
58933	Delta Airlines, Inc. (Wkrs)	Portland, OR	03/01/06	02/09/06
58934	Codi, Inc. (Comp)	Pillow, PA	03/01/06	02/27/06
58935	Wormser Company (Comp)	Sharon, TN	03/01/06	02/28/06
58936	Newark Graphicboard Products (State)	Franklin, OH	03/01/06	02/28/06
58937	Rexam (Comp)	North Versailles, PA	03/01/06	02/28/06
58938	Crenshaw Die and Mfg. Corporation (State)	Irvine, CA	03/01/06	02/28/06
58939	Kmart (Wkrs)	Rainbow City, AL	03/01/06	02/28/06
58940	National Envelope (Wkrs)	Earth City, MO	03/01/06	02/27/06
58941	Delphi Connectin Systems (Comp)	Irvine, CA	03/01/06	02/27/06
58942	Holmes Group (The) (Wkrs)	Sedalia, MO	03/01/06	03/01/06
58943	Rexnord Corp. Disc Coupling Operation (Union)	Warren, PA	03/02/06	02/27/06
58944	Airfoil Technologies International (Union)	Mentor, OH	03/02/06	02/20/06
58945	Kramer Air Tool (State)	Lansing, MI	03/02/06	02/16/06
58946	Fibre-Metal Products Co. (Comp)	Concordville, PA	03/02/06	02/20/06
58947	Rantoul Products (IBT)	Rantoul, IL	03/02/06	03/01/06
58948	Carolina Mills, Inc. (Comp)	Newton, NC	03/02/06	03/01/06
58949	WWG (State)	Warrenton, GA	03/02/06	03/02/06
58950	Atlantic Luggage Company (Comp)	Ellwood City, PA	03/03/06	03/02/06
58951	Delta Airlines, Inc. (Wkrs)	Atlanta, GA	03/03/06	02/23/06
58952	Bartlett Corporation (Comp)	Muncie, IN	03/03/06	03/02/06
58953	Eagle Ottawa, LLC (State)	Rochester Hills, MI	03/03/06	03/02/06
58954	Kidde Residential and Commercial (Comp)	Colorado Springs, CO	03/03/06	03/01/06

APPENDIX–54 TAA—Continued

[Petitions instituted between 2/27/06 and 3/3/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58955	Sony Magnetic Products, Inc. of America (Comp)	Dothan, AL	03/03/06	03/02/06
58956	Sony Technology Center Pittsburgh (Wkrs)	Mount Pleasant, PA	03/03/06	03/02/06
58957	Robbins, Inc. (Comp)	Ishpeming, MI	03/03/06	03/02/06
58958	Alcan Pharmaceutical Packaging and Personal Care, Inc. (GMP).	Centralia, IL	03/03/06	02/05/06
58959	ITT HydroAir (Comp)	Brea, CA	03/03/06	03/02/06
58960	Lesaffre–Red Star Yeast (UAW)	Milwaukee, WI	03/03/06	02/28/06
58961	TDK Ferrites Corporation (Wkrs)	Shawnee, OK	03/03/06	03/02/06
58962	Colgate-Palmolive Company (Comp)	Jeffersonville, IN	03/03/06	02/28/06
58963	Huntington Foam (Comp)	Greenville, MI	03/03/06	03/03/06
58964	Reach Road Manufacturing Corp. (Comp)	Williamsport, PA	03/03/06	03/03/06

[FR Doc. E6–4307 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of February–March 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222, and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,646; Klaussner Furniture Ind., Asheboro, NC: December 22, 2004.

TA–W–58,655; Terumo Medical Corporation, TMC Div., Elkton, MD: January 18, 2005.

TA–W–58,665; American Racing Equipment, Inc., Subsidiary of Platinum Equity, Rancho Dominguez, CA: August 10, 2005.

TA–W–58,765; J.G. Garment, Bailey, NC: January 31, 2005.

TA–W–58,824; Krueger International, Tupelo, MS: January 30, 2005.

TA–W–58,824A; Krueger International, Pontotoc, MS: January 30, 2005.

TA–W–58,870; National Manufacturing Co., a subsidiary of the Stanley Works, Sterling, IL: December 6, 2005.

TA–W–58,575; Lear Corporation, Interior Systems Div., Marshall, MI: January 3, 2005.

TA–W–58,709; Longwood Engineered Products, Inc., Norwich, CT: January 24, 2005.

TA–W–58,734; Conflandey, Inc., Whiteville, NC: January 26, 2005.

TA–W–58,746; U.S. Repeating Arms Co., New Haven, CT: January 30, 2005.

TA–W–58,771; Richmond Yarns, Inc., Ellerbe, NC: January 31, 2005.

TA–W–58,779; Moldex Corporation, Tool Shop, Meadville, PA: February 2, 2005.

TA–W–58,761; Carm Newsome Hosiery, Inc., Fort Payne, AL: January 24, 2005.

TA–W–58,767; Houston Hosiery Mills, Valdese, NC: January 25, 2005.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222, and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,533; Selco, Inc., Austin, TX: December 21, 2004.

TA–W–58,710; Tyco Electronics, Microdot Connectors Division, South Pasadena, CA: January 20, 2005.

TA–W–58,797; TM Tool and Die, Inc., Workers at Black and Decker, Fayetteville, NC: February 2, 2005.

TA–W–58,810; Dura Automotive Systems, North American Body and Glass, Lawrenceburg, TN: February 6, 2005.

TA–W–58,812; Libralters Plastics, Inc., Walled Lake, MI: January 25, 2005.

TA–W–58,826; After Six, Inc., Athens, GA: February 7, 2005.

TA–W–58,843; Align Technology, Inc., Santa Clara, CA: February 8, 2005.

TA–W–58,856; Ensign-Bickford Company (The), Trojan Explosives Plant, Booster, Spanish Fork, UT: February 15, 2005.

TA–W–58,873; AstenJohnson, Inc., Forming Div., Warrendale, PA: February 20, 2005.

TA–W–58,650; Continental AFA Dispensing Co., Forest City, NC: January 16, 2005.

TA–W–58,751; Gerber Plumbing Fixtures LLC, Kokomo Sanitary Pottery Division, Div. of Globe Union Industrial Corp., Kokomo, IN: January 30, 2005.

The following certification has been issued. The requirement of supplier to a trade certified firm, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,747; Cone Denim LLC, White Oak Division, Greensboro, NC: December 4, 2005.

TA–W–58,753; Invista S.A.R.L, Apparel-Spandex Div., Waynesboro, VA: January 27, 2005.

TA–W–58,656; Andrews Wire, L and P Wire Division, Andrews, SC: January 16, 2005.

The following certification has been issued. The requirement of downstream producer to a trade certified firm and section 246(a)(3)(A)(ii), and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,723; Elliott Company, Formerly known as Elliott Turbo Machinery Co., Jeannette, PA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

TA–W–58,643; Collins and Aikman, Nashville, TN.

TA–W–58,649; Mondi Packaging Akrosil LLC, formerly Thilmany Akrosil, Menasha, WI.

TA–W–58,694; Doranco, Inc., Mansfield, MA.

TA–W–58,706; Donaldson Company, Inc., Chillicothe, MO.

TA–W–58,727; Hollister Incorporated, Kirksville Manufacturing Facility, Kirksville, MO.

TA–W–58,821; Curly's Dairy/Wilcox Family Farms, Salem, OR.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,342; Studio Resource, Milwaukie, OR.

TA–W–58,462; Key Plastics, Hartford City, IN.

TA–W–58,609; American Decorative Surfaces, Inc., Dupo, IL.

TA–W–58,663; Classic Print Products, Inc., Burlington, NC.

TA–W–58,735; Frank Morrow Co., Providence, RI.

TA–W–58,742; Johnson Controls, Inc., Hoover Automotive Division, Jefferson City, MO.

TA–W–58,741; Singer Hosiery Mills, Inc., Thomasville, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,624; Fairchild Semiconductor International, Mountain Top, PA.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–58,621; Murata Electronics North America, State College, PA.

TA–W–58,635; LandAmerica Tax and Flood, a subsidiary of Land America Financial Group, Englewood, CO.

TA–W–58,728; U.S. Security Associates, Working on-site at Techneglas, Inc., Pittston, PA.

TA–W–58,780; Direct Source Industries, San Francisco, CA.

TA–W–58,899; Pacific Cycle, Inc., Formerly Known as Brunswick Bicycles, Olney, IL.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,723; Elliott Company, Formerly known as Elliott Turbo Machinery Co., Jeannette, PA.

TA–W–58,643; Collins and Aikman, Nashville, TN.

TA–W–58,649; Mondi Packaging Akrosil LLC, formerly Thilmany Akrosil, Menasha, WI.

TA–W–58,694; Doranco, Inc., Mansfield, MA.
TA–W–58,706; Donaldson Company, Inc., Chillicothe, MO.
TA–W–58,727; Hollister Incorporated, Kirksville Manufacturing Facility, Kirksville, MO.
TA–W–58,821; Curly's Dairy/Wilcox Family Farms, Salem, OR.
TA–W–58,342; Studio Resource, Milwaukie, OR.
TA–W–58,462; Key Plastics, Hartford City, IN.
TA–W–58,609; American Decorative Surfaces, Inc., Dupo, IL.
TA–W–58,663; Classic Print Products, Inc., Burlington, NC.
TA–W–58,735; Frank Morrow Co., Providence, RI.
TA–W–58,742; Johnson Controls, Inc., Hoover Automotive Division, Jefferson City, MO.
TA–W–58,624; Fairchild Semiconductor International, Mountain Top, PA.
TA–W–58,741; Singer Hosiery Mills, Inc., Thomasville, NC.
TA–W–58,621; Murata Electronics North America, State College, PA.
TA–W–58,635; LandAmerica Tax and Flood, a subsidiary of LandAmerica Financial Group, Englewood, CO.
TA–W–58,728; U.S. Security Associates, Working on-site at Techneglas, Inc., Pittston, PA.
TA–W–58,780; Direct Source Industries, San Francisco, CA.
TA–W–58,899; Pacific Cycle, Inc., Formerly Known as Brunswick Bicycles, Olney, IL.

The Department has determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–58,734; Conflandey, Inc., Whiteville, NC.
TA–W–58,761; Carm Newsome Hosiery, Inc., Fort Payne, AL.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,533; Selco, Inc., Austin, TX.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of February–March 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 15, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4308 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,039, TA–W–58,039A, TA–W–58,039B and TA–W–58,039C]

Liberty Fibers Corporation (Including Employees), a Subsidiary of Silva Holdings, Inc., Lowland, TN, Charlotte, NC, Fort Mill, SC, Long Island, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 21, 2005, applicable to workers of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc., Lowland, Tennessee. The notice was published in the **Federal Register** on November 9, 2005 (70 FR 68099).

At the request of a company official and the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving six employees of the Lowland, Tennessee facility of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc. located in Charlotte, North Carolina, Fort Mill, South Carolina and Long Island, New York. Mr. Kermit Noble, Mr. Paul Souza, Mr. Robert Bowman, Mr. Reggie Crowell, Mr. William Martin and Mr. Ronald True provided sales and marketing support function services for the production of rayon staple fiber produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Lowland, Tennessee facility of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc. located in Charlotte, North Carolina, Fort Mill, South Carolina, and Long Island, New York.

The intent of the Department's certification is to include all workers of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc., Lowland, Tennessee who was adversely affected by increased customer imports.

The amended notice applicable to TA–W–58,039 is hereby issued as follows:

All workers of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc., Lowland, Tennessee (TA–W–58,039), and including employees of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc., Lowland, Tennessee, located in Charlotte, North Carolina (TA–W–58,039A), Fort Mill, South Carolina (TA–W–58,039B), and Long Island, New York (TA–W–58,039C), who became totally or partially separated from employment on or after September 27, 2004, through October 21, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of February 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4284 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,828]

Motorola, Inc., Integrated Supply Chain, Fort Worth, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2006 in response to a worker petition filed by a company official on behalf of workers at Motorola, Inc., Integrated supply chain, Fort Worth, Texas.

The petitioning group of workers is covered by a petition (TA–W–58,852) filed on February 16, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 6th day of March 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4289 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Underground Retorts

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 57.22401; Underground Retorts.

DATES: Submit comments on or before May 23, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

This regulation pertains to the safety requirements to be followed by the mine operators in the use of underground retorts to extract oil from shale by heat or fire. Prior to ignition of retorts, the mine operator must submit a written plan indicating the acceptable levels of combustible gases and oxygen; specifications and location of off-gas monitoring procedures and equipment; procedures for ignition of retorts and details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure safety of miners.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

This request for information contains provisions whereby mine operators can maintain compliance with the regulations and assure the safety of miners where underground retorts are used.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Underground Retorts.

OMB Number: 1219–0096.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1.

Total Burden Hours: 160 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 14th day of March, 2006.

David L. Meyer,

Director of Administration and Management.

[FR Doc. E6–4277 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,802, TA–W–57,802A, TA–W–57,802B, TA–W–57,802C and TA–W–57,802D]

Sara Lee Branded Apparel Division Office, Including Employees, Winston-Salem, NC, Located in Bristol, Norwalk, Madison, and New Canaan, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on September 28, 2005, applicable to workers of Sara Lee Branded Apparel, Division Office, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62347).

At the request of a company official and the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving four employees of the Division Office, Winston-Salem, North Carolina facility of the Sara Lee Branded Apparel located in Bristol, Connecticut, Norwalk, Connecticut, Madison, Connecticut and New Canaan, Connecticut. Ms. Sharon Allen, Ms. Susan McIntyre, Mr. Michael Hoban and Ms. Vivian Scanlon provided a variety of support function services for the activities related to the production of underwear (shorts and T-shirts) produced by the subject company.

Based on these findings, the Department is amending this certification to include employees of the Division Office, Winston-Salem, North Carolina facility of the Sara Lee Branded Apparel located in Bristol, Connecticut, Norwalk, Connecticut Madison,

Connecticut and New Canaan, Connecticut.

The intent of the Department's certification is to include all workers of Sara Lee Branded Apparel, Division Office, Winston-Salem, North Carolina who was adversely affected by increased imports.

The amended notice applicable to TA–W–57,802 is hereby issued as follows:

All workers of Sara Lee Branded Apparel, Division Office, Division of the Sara Lee Corporation, Winston-Salem, North Carolina (TA–W–57,802), and including employees of Sara Lee Branded Apparel, Division, Office, Winston Salem, North Carolina, located in Bristol, Connecticut (TA–W–57,802A), Norwalk, Connecticut (TA–W–57,802B), Madison, Connecticut (TA–W–57,802C) and New Canaan, Connecticut (TA–W–57,802D), who became totally or partially separated from employment on or after July 29, 2004, through September 28, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all workers of Sara Lee Branded Apparel, Division of the Sara Lee Corporation, Winston-Salem, North Carolina, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4288 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,113]

Unimatrix Americas, Greensboro, NC; Notice of Negative Determination on Reconsideration

On February 22, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 2, 2006 (71 FR 10717–10718).

The petition for the workers of Unimatrix Americas, Greensboro, North Carolina, engaged in production planning and sales of apparel products was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The company official filed a request for reconsideration in which the petitioners contend that the Department erred in its interpretation of work performed at the subject facility as a service and further convey that workers of the subject firm supported production of an affiliated firm Unifi by ''pulling through Unifi's domestically-produced yarns into domestically-manufactured garments'' and ''supported other unaffiliated domestic apparel manufacturing facilities.'' The petitioner further states that the subject firm should be considered a downstream producer for Unifi, Inc. because it assisted Unifi, Inc. in delivering and distributing their products to garments manufacturers. The petitioner concludes that because Unimatrix promoted usage of yarn manufactured by Unifi in the production of fabric and garments done by independent companies which were contracted by Unimatrix, the workers of the subject firm should be considered in support of production of yarn at Unifi, Inc. The petitioner alleges that increased foreign competition and financial health of Unifi, Inc. had a direct negative impact on Unimatrix Americas and thus workers of the subject firm should be eligible for Trade Adjustment Assistance (TAA).

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that the petitioning group of workers at the subject firm was coordinating all sourcing activities for production of apparel done by independent contractors in Central America. The workers were responsible for ''production planning and sales of domestically-produced apparel products containing fabric domestically-produced Unifi yarn.'' The subject firm ordered, purchased and exported supplies and goods needed for production of garments, including purchasing of Unifi yarn and arranging its further production into fabric and garments. The workers of the subject company located different independent manufacturing contractors in Central America, monitored their production and kept customers of Unimatrix informed of all production issues and ship dates. The official stated that workers of the subject firm also coordinated importing of the goods back into the United States and handled final shipments and invoicing. The company official stated that Unimatrix served as the ''middleman'' between different production companies and that majority of Unimatrix' customers, who manufacture garments have moved to sourcing from abroad, thus negatively impacting the subject firm.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

The investigation on reconsideration revealed that Unimatrix Americas, Greensboro, North Carolina is affiliated with Unifi, Inc. Workers of Unifi, Inc. in Yadkinville, North Carolina and Madison, North Carolina manufacture polyester yarn and nylon. Further investigation revealed that workers of the subject firm did not support production of polyester yarn and/or nylon at these facilities but sold apparel, utilizing Unifi products. Workers of the subject firm purchased yarn from Unifi, outsourced production of fabric out of this yarn to independent companies, exported fabric to foreign companies for manufacturing of apparel and imported final products back into the United States.

Providing global sourcing, production planning, sales and marketing is not considered production of an article within the meaning of Section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974.

The petitioner attached a document on Unifi's Fourth Quarter Results to support the allegations.

A careful review of this document revealed Unifi's decision to focus on the internal resources to support the downstream initiatives around the globe. The document clarifies that Unifi, Inc. developed internal knowledge, expertise, and relationships to drive Unifi's products to the market and as a result it will discontinue Unimatrix Americas. All functions performed by Unimatrix Americas will be utilized within Unifi because it established a new very successful business model to have a successful sourcing.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers did not produce an article.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Unimatrix Americas, Greensboro, North Carolina.

Signed at Washington, DC, this 10th day of March, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4294 Filed 3–23–06; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[IA–05–052; ASLBP No. 06–845–01–EA]

In the Matter of David Geisen; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.202, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

David Geisen (Enforcement Action)

This proceeding concerns a request for a hearing submitted on February 23, 2006, by David Geisen in response to a January 4, 2006 NRC staff ''Order Prohibiting Involvement in NRC-License Activities,'' 71 FR 2571 (January 17, 2006). Under the terms of that immediately effective staff order, the staff concluded that because Mr. Geisen (1) had knowledge of the degraded condition of the reactor pressure vessel (RPV) head at the Davis-Besse Nuclear Power Station and the limitations experienced during RPV head inspections; and (2) had deliberately provided materially incomplete and inaccurate information in connection with the continued operation of the Davis-Besse facility for a period prior to a February 2002 refueling outage that resulted in a significant adverse condition going uncorrected, Mr. Geisen was, among other things, prohibited for five years from engaging in NRC-licensed activities.

The Board is comprised of the following administrative judges:

Michael C. Farrar, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E. Roy Hawkens, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Nicholas G. Trikouros, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.202.

Issued at Rockville, Maryland, this 16th day of March 2006.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–4269 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–05–053; ASLBP No. 06–846–02–EA]

In the Matter of Dale L. Miller; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.202, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Dale L. Miller (Enforcement Action)

This proceeding concerns a request for a hearing submitted on February 23, 2006, by Dale L. Miller in response to a January 4, 2006 NRC staff ''Order Prohibiting Involvement in NRC-License Activities,'' 71 FR 2579 (January 17, 2006). Under the terms of that immediately effective staff order, the staff concluded that because Mr. Miller (1) had knowledge of the degraded condition of the reactor pressure vessel (RPV) head at the Davis-Besse Nuclear Power Station and the limitations experienced during RPV head inspections; and (2) had deliberately provided materially incomplete and inaccurate information in connection with the continued operation of the Davis-Besse facility for a period prior to a February 2002 refueling outage that resulted in a significant adverse condition going uncorrected, Mr. Miller was, among other things, prohibited for five years from engaging in NRC-licensed activities.

The Board is comprised of the following administrative judges:

Michael C. Farrar, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E. Roy Hawkens, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Nicholas G. Trikouros, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.202.

Issued at Rockville, Maryland, this 16th day of March 2006.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–4272 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–05–054; ASLBP No. 06–847–03–EA]

In the Matter of Steven P. Moffitt; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.202, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Steven P. Moffitt (Enforcement Action)

This proceeding concerns a request for a hearing submitted on February 23, 2006, by Steven P. Moffitt in response to a January 4, 2006 NRC staff ''Order Prohibiting Involvement in NRC-License Activities,'' 71 FR 2581 (January 17, 2006). Under the terms of that immediately effective staff order, the staff concluded that because Mr. Moffitt (1) had knowledge of the degraded condition of the reactor pressure vessel (RPV) head at the Davis-Besse Nuclear Power Station and the limitations experienced during RPV head inspections; and (2) had deliberately provided materially incomplete and inaccurate information in connection with the continued operation of the Davis-Besse facility for a period prior to a February 2002 refueling outage that resulted in a significant adverse condition going uncorrected, Mr. Moffitt was, among other things, prohibited for five years from engaging in NRC-licensed activities.

The Board is comprised of the following administrative judges:

Michael C. Farrar, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E. Roy Hawkens, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Nicholas G. Trikouros, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.202.

Issued at Rockville, Maryland, this 16th day of March 2006.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–4276 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on March 17, 2006 is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

FOR FURTHER INFORMATION PLEASE CONTACT: Mohammad S. Saba, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–7608; e-mail *mss@nrc.gov.*

Dated: March 17, 2006.

Andrew L. Bates,

Federal Advisory Committee, Management Officer.

[FR Doc. E6–4286 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–05–006]

In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

The Licensees identified in Attachment A [1] to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 30, 32, 50, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These additional security measures will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many of the measures set forth in Attachment B to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

Although the security measures implemented by Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and

[1] Attachment A contains sensitive unclassified information and will not be released to the public.

[2] Attachment B contains Safeguards Information and will not be released to the public.

security, in light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that the security measures contained in Attachment B of this Order contain Safeguards Information and will not be released to the public as per Order entitled, ''Issuance of Order Imposing Requirements for Protecting Certain Safeguards Information,'' issued on November 5, 2004 and issued specifically to the Licensees identified in Attachment A to this Order on the date of this Order. To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licensees identified in Attachment A to this Order shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30, 32, 70 and 71, *It is hereby ordered, effective immediately, that all licensees identified in attachment a to this order shall comply with the following:*

A. All Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment B to this Order. The Licensees shall immediately start implementation of the requirements in Attachment B to the Order and shall complete implementation by September 6, 2006, or before the first shipment of RAMQC, whichever is sooner. This Order supercedes the additional transportation security measures prescribed in Attachment 2, Section 7.d. of the Manufacturer's and Distributor's Order issued January 12, 2004.

B.1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment B, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment B to this Order would adversely impact the safe transport of radioactive material quantities of concern must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment B requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.

D. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, and C above shall be submitted to the Document Control Desk, ATTN: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain sensitive security related information shall be properly marked and handled in accordance with Licensees' Safeguards Information or Safeguards Information—Modified Handling program.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards or the Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Office of Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III, or IV, at the respective addresses specified in Appendix A to 10 CFR part 73, appropriate for the specific facility, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on

mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.*

Dated this 10th day of March 2006.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–4279 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–04–191]

In the Matter of All Licensees Who Possess Radioactive Material in Quantities of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order Issued Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)

The Licensees, identified in Attachment A [1] to this Order, hold licenses issued in accordance with the Atomic Energy Act of 1954, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, authorizing them to possess and transfer items containing radioactive material quantities of concern. The NRC intends to issue security Orders to these licensees in the near future. Orders will be issued to both NRC and Agreement State materials licensees who may transport radioactive material quantities of concern. The Orders will require compliance with specific Additional Security Measures to enhance the security for transport of certain radioactive material quantities of concern. The NRC will issue Orders to both NRC and Agreement State licensees under its authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Commission has determined that these documents contain Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachment B of this Order, so that affected Licensees can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[2] whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *.'' This authority extends to information concerning transfer of special nuclear material, source material, and byproduct material. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment B. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachment B applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, and are considered to be trustworthy and reliable. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in Attachment B. All licensees must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. The licensees remain responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachment B must address, at a minimum, the following: The general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that the licensees are implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, all licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing them to possess and who may transport items containing radioactive material quantities of concern shall implement the requirements identified in Attachment B to this Order. The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment B to this Order for handling of Safeguards Information in conjunction with current NRC license requirements or previous NRC Orders. Additional measures set forth in Attachment B should be handled and controlled in accordance with the licensee's current program for Safeguards Information. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the

[1] Attachment A contains Official Use Only—Security Related Information and will not be released to the public.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

public health, safety and interest require that this Order be effective immediately.

Accordingly, pursuant to sections 81, 147, 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, 10 CFR part 30, 10 CFR part 32, 10 CFR part 35, and 10 CFR part 70, it is hereby ordered, effective immediately, that all licensees identified in Attachment A to this Order and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final) or any related safeguards information shall comply with the requirements of Attachment B.

The Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or resend any of the above conditions upon demonstration by the licensee. In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 10th day of March 2006.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment A—Service List of Materials Licensees (Redacted)

Attachment B—Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are Safeguards Information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the Safeguards Information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by state and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement, if they possess facility SGI–M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection (See more under Conditions for Access).

State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, (i.e., need-to-know) would still apply to the police organization, as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See sections 147b. and 223 of the Act.

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having

access to the information. Employees of an organization affiliated with the licensee's company, e.g., a parent company, may be considered as employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

A. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

B. A member of a duly authorized committee of the Congress;

C. The Governor of a State or his designated representative;

D. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

E. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies;

F. A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of part 10 of the Code of Federal Regulations; or

G. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees. In a generic sense, the individuals described above in (A) through (G) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (A) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies Safeguards Information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI-M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible; and

Administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible.

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''Safeguards Information—Modified Handling.'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked ''Safeguards Information—Modified Handling'' in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions.

Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting ''Safeguards Information—Modified Handling.''

In additional to the ''Safeguards Information—Modified Handling'' markings at the top and bottom of page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (e.g., ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents *which they created* no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document shall indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI-M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (Note: if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/140–1/1401val.htm*. SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information-Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information-Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet.

Attachment C—Designation Guide for Safeguards Information

[FR Doc. E6–4281 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Minnesota: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Minnesota

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the NRC and the State of Minnesota.

SUMMARY: This notice is announcing that on February 3, 2006, Dr. Nils J, Diaz, Chairman of the U.S. Nuclear Regulatory Commission (NRC), and on March 2, 2006, Governor Tim Pawlenty of the State of Minnesota signed an Agreement as authorized by section 274b. of the Atomic Energy Act of 1954, as amended (Act). The Agreement provides for the Commission to discontinue its regulatory authority and for Minnesota to assume regulatory authority over the possession and use of byproduct material as defined in section 11e.(1) of the Act, source material, and special nuclear materials (in quantities not sufficient to form a critical mass). Under the Agreement, a person in Minnesota possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** (FR) and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by section 274e. of the Act.

FOR FURTHER INFORMATION CONTACT: Aaron T. McCraw, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–1277; e-mail *ATM@NRC.GOV.*

SUPPLEMENTARY INFORMATION: The draft Agreement was published in the FR for comment once a week for four consecutive weeks (see, e.g., 70 FR 68102, November 9, 2005) as required by the Act. The public comment period ended on December 9, 2005. The Commission received no comments. The proposed Minnesota Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Minnesota, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Minnesota Department of Health, the NRC staff completed an assessment of the Minnesota program. A copy of the staff assessment was made available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on January 26, 2006, that the proposed Minnesota program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Documents referred to in this notice and other publicly available documents are available electronically at the NRC's Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of March, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Agreement Between the United States Nuclear Regulatory Commission and the State of Minnesota for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Minnesota is authorized under § 144.1202, Subdivision 1, Minnesota Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Minnesota certified on July 6, 2004, that the State of Minnesota (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on January 26, 2006, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear materials, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear materials waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E, F and G, whereby the State may then exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear materials shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear materials.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on March 31, 2006, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this 3rd day of February, 2006.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,
Chairman.

Done at St. Paul, Minnesota, in triplicate, this 2nd day of March, 2006.

For the State of Minnesota.

Tim Pawlenty,
Governor.

[FR Doc. E6–4304 Filed 3–23–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8672; 34–53515, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public telephone conference meeting on Wednesday, April 12, 2006, at 10 a.m. Members of the public may take part in the meeting by listening to the Web cast accessible on the Commission's Web site at *http://www.sec.gov* or by calling telephone number (800) 260–0718 and using code number 823292. Persons needing special accommodations to take part because of a disability should notify the contact person listed below.

The agenda for the meeting includes further consideration of the Exposure Draft of the Committee's Final Report released for public comment on

February 28, 2006 available at *http://www.sec.gov/rules/other/33–8666.pdf* and published in the **Federal Register** [71 FR 11090] on March 3, 2006 available at *http://www.sec.gov/rules/other/33–8666fr.pdf*. The public is invited to submit written statements for the meeting.

DATES: Written statements should be received on or before April 5, 2006.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Nancy M. Morris, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: March 20, 2006.

Nancy M. Morris,

Committee Management Officer.

[FR Doc. E6–4278 Filed 3–23–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53521; File No. SR–Amex–2005–072]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of the iShares® Silver Trust

March 20, 2006.

I . Introduction

On June 30, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under Amex Rules 1200A *et seq.* iShares® Silver Trust shares (the ''Silver Shares'' or ''Shares'').[3] On September 15, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 23, 2006.[5] The Commission received 255 comment letters regarding the proposed rule change.[6] On February 28, 2006, the Exchange filed a response to these comments.[7] This order approves the proposed rule change, as amended.

II. Description of Proposal

In January 2005, the Exchange adopted rules for the listing and trading of ''Commodity-Based Trust Shares.'' [8] Commodity-Based Trust Shares (the ''Commodity Shares'') are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. Commodity Shares are a form of trust issued receipt (''TIR'') [9] that instead of holding one or more discrete securities will hold one or more physical commodities. The Exchange has listed the iShares COMEX Gold Trust [10] and trades pursuant to unlisted trading privileges (''UTP''), the streetTRACKS Gold Trust,[11] as Commodity-Based Trust Shares pursuant to Exchange Rules 1200A *et seq.*

Pursuant to Amex Rule 1201A, the Exchange may approve for listing and trading Commodity Shares on an underlying commodity.[12] Accordingly, the Amex proposes to list for trading Silver Shares under Exchange Rule 1200A et. seq.[13]

The Exchange proposes to list and trade the Silver Shares, which represent beneficial ownership interests in the net assets of the iShares Silver Trust [14] (the ''Silver Trust'' or ''Trust'') consisting primarily of silver bullion. Each Silver Share will initially correspond to 10 ounces of silver.[15] The Silver Shares will meet the initial and continued listing criteria under Amex Rule 1202A.[16]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] iShares® is a registered trademark of Barclays Global Investors, N.A.

[4] Amendment No. 1 to the proposed rule change clarifies the valuation procedure that would be used by the Bank of New York to determine the daily value of the silver contained in the iShares® Silver Trust.

[5] *See* Securities Exchange Act Release No. 53130 (January 17, 2006), 71 FR 3570 (January 23, 2006) (''Notice'').

[6] These comment letters are available for review on the Commission's Web site at *http://www.sec.gov/rules/sro/amex/amex2005072.shtml*.

[7] *See* letter from Neal L Wolkoff, Chairman and Chief Executive Officer, Amex, to Nancy M. Morris, Secretary, Commission, dated February 28, 2006 (''Wolkoff Letter'').

[8] *See* Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust).

[9] A Trust Issued Receipt or ''TIR'' is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust that holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities. The Exchange defines a ''security'' or ''securities'' to include stocks, bonds, options, and other interests or instruments commonly known as securities. *See* Article I, Section 3(j) of the Amex Constitution.

[10] *See supra* note 8.

[11] *See* Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the UTP trading of the streetTRACKS Gold Shares).

[12] Amex Rule 1200A(b)(2) defines ''commodity'' as set forth in Section 1(a)(4) of the Commodity Exchange Act (''CEA'').

[13] *See* applicable Amex Rules 1200A, 1201A, 1202A, 1203A, 1204A, and 1205A.

[14] The Trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940. The Silver Trust will be formed under a depositary trust agreement, among Bank of New York, as Trustee, Barclays Global Investors International, Inc. (''Barclays'' or ''Sponsor''), the Sponsor, all depositors, if any, and the holders of Silver Shares.

[15] The amount of silver associated with each basket (and individual Silver Share) is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[16] The initial listing standards set forth in Amex Rule 1202A(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section ''Criteria for Initial and Continued Listing,'' the

Continued

In effect, purchasing Silver Shares will provide investors a new mechanism to participate in the silver market. Information about the liquidity, depth, and pricing mechanisms of the international silver market, management and structure of the Trust, and description of the Silver Shares follows below.

A. Description of the Silver Market

The silver market is a global marketplace consisting of both over-the-counter (''OTC'') transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options. In its filing with the Commission, Amex provided a description of the silver market.[17]

1. The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global silver trading. The London OTC market is the largest silver clearing market. The Exchange believes the period of greatest liquidity in the silver market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the Commodity Exchange, Inc. (''COMEX'').[18] This period lasts for approximately five (5) hours [19] each New York business day, from 8:25 a.m.–1:25 p.m. Eastern Time (''ET'').

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London (the largest market), New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association (''LBMA'').[20]

The Exchange indicates that there are no authoritative published figures for overall worldwide volume in silver trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.[21] The Exchange notes that the monthly average daily volume figures published by the LBMA for 2004 range from, a high of 143.4 million to a low of 75.5 million troy ounces per day. Through May 2005, the monthly average daily volume has ranged from a high of 152.1 million to a low of 76.9 million. The COMEX also publishes price and volume statistics for exchange-traded transactions in contracts for the future delivery of silver (and related options).[22]

2. Futures Exchanges

The Exchange states that the most significant silver futures exchanges are the COMEX and the Tokyo Commodity Exchange (''TOCOM'').[23] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs on these exchanges are negotiable. The Exchange represents that as a matter of practice, only a small percentage of the future market turnover ever comes to physical delivery of the silver represented by the contracts traded. Both COMEX and TOCUM permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

3. Silver Market Regulation

There is no direct regulation of the global OTC market in silver. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Market Act of 2000 (''FSM Act''). The Exchange states that under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards and deposits of silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the U.S. OTC market for silver are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodities Futures Trading Commission (''CFTC''), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

B. Product Description

1. Creation and Redemption Process

Issuances of Silver Shares will be made only in baskets of 50,000 shares or multiples thereof (the ''Basket

Exchange expects the minimum number of Silver Shares required to be outstanding at the time of trading to be 150,000.

[17] *See* Notice, *supra* note 5.

[18] COMEX is a division of the New York Mercantile Exchange, Inc. (''NYMEX'') where silver futures contracts and related options are traded. The open outcry trading hours of the COMEX silver futures contract is from 8:25 a.m. to 1:25 p.m. ET Monday through Friday. NYMEX ACCESS®, an electronic trading system, is open for price discovery on COMEX silver futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning ET; and from 7 p.m. Sunday night until Monday morning at 8 a.m. ET.

[19] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

[20] Further information about the LBMA may be found at *http://www.lbma.org.uk*. There are currently nine (9) market-making members of the LBMA, five of which offer clearing services, and 51 full members.

[21] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm*. The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[22] Information regarding price and average daily volume on the COMEX can be found at *http://www.nymex.com/jsp/markets.md_annual_volume.jsp*.

[23] There are other silver exchange markets, such as the London Metals Exchange, the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

Aggregations'' or ''Baskets'').[24] The Trust will issue and redeem Basket Aggregations on a continuous basis, by or through registered broker-dealers that have entered into participant agreements (each, an ''Authorized Participant'') [25] with the Sponsor and the Trustee, Bank of New York (''BNY'').[26] Following issuance, the Shares will be traded on the Exchange similar to other equity securities, such as shares of the iShares COMEX Gold Trust and the streetTRACKS Gold Trust.[27]

Basket Aggregations of Shares will be issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the ''Basket Silver Amount'') will be determined on each business day by the Trustee, BNY.[28] Authorized Participants that wish to purchase a Basket must transfer the Basket Silver Amount to the Trust in exchange for a Basket of Shares. Authorized Participants that wish to redeem a Basket of Shares will receive the Basket Silver Amount in exchange for each Basket surrendered. JP Morgan Chase Bank, N.A., London Branch (''JP Morgan Chase'' or ''Custodian'') will be the custodian for the Trust and responsible for safekeeping the silver.[29]

On each business day, BNY will make available immediately prior to the opening of trading on the Amex, the Indicative Basket Silver Amount for the creation of a Basket.[30] BNY will adjust the quantity of silver included in the Basket Silver Amount (determined shortly after 4 p.m.) to reflect sales of silver to cover expenses and any loss of deposited silver that may occur since the previous calculation. The Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association (''CTA''), an amount representing on a per share basis, the current value of the Basket Silver Amount, known as the ''Indicative Trust Amount.''

The Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Silver Shares to constitute a Basket Aggregation (*i.e.*, 50,000 shares). An Authorized Participant redeeming a Basket Aggregation will receive the silver amount of the Basket Silver Amount announced by the Trustee. Upon the surrender of the Shares and payment of applicable Trustee's fee and any expenses, taxes or charges, BNY will deliver to the redeeming Authorized Participant the amount of silver corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, silver will then be delivered to the redeeming Authorized Participants in the form of physical bars only. Silver Shares will be registered in book entry form through DTC.

The Exchange states that the Basket Silver Amount necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual. The initial Basket Silver Amount is 500,000 ounces of silver (with each Share initially representing 10 ounces of Silver). On each day that the Amex is open for regular trading, BNY will adjust the quantity of silver constituting the Basket Silver Amount as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio) [31] and any extraordinary expenses or liabilities not assumed by the Sponsor. BNY will determine the Basket Silver Amount for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing by the number of Baskets outstanding. Fractions of an ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Silver Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Basket Silver Amount usually will not change even though the value of the Basket Silver Amount may change based on the market price of silver.

2. Determination of NAV, Basket Silver Amount, and Indicative Basket Amount

Shortly after 4 p.m. (ET) each business day, the BNY will determine the NAV of the Trust, utilizing that day's announced London silver fix price (unless the Sponsor, in consultation with the Trustee, determines that an alternative publicly available pricing benchmark more fairly represents the commercial value of the silver held by the Trust).[32] Once the value of the silver is determined, BNY will then determine an ''adjusted NAV'' by subtracting all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets (*i.e.*, the Sponsor's fee)), expenses, and other liabilities of

[24] Initially, each Share represents 10 ounces of silver. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

[25] An ''Authorized Participant'' is a person, who at the time of submitting to the Trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company (''DTC'') Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

[26] BNY will charge a transaction fee in connection with the redemption and/or creation of Baskets. In addition, Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 shares of the Trust that compose the initial Baskets.

[27] *See supra* notes 8 and 11.

[28] A troy ounce, equal to 1.0971428 ounces avoirdupois, with a minimum fineness of 0.999. ''Avoirdupois'' is the system of weights used in the U.S. and U.K. for goods other than precious metals, gems, and drugs. In that system, a pound is 16 ounces and an ounce is 16 drams.

[29] If the total value of the Trust's silver held by the Custodian exceeds $1 billion, then the Custodian will be under no obligation to accept additional silver deliveries. In such a case, the Trustee will retain an additional custodian.

[30] The Sponsor will also make the next day's Indicative Basket Silver Amount available on the Trust Web site (*http://www.iShares.com*) shortly after 4 p.m. ET each business day. The Basket Silver Amount, Indicative Basket Silver Amount, and net asset value (''NAV'') will be publicly available simultaneously to all market participants (to avoid any informational advantage) on either the Trust Web site or Amex Web site. These items will also be communicated to Authorized Participants via facsimile or electronic mail message. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

[31] The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's fee, the Custodian's fee, Amex listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to $100,000 per annum in legal fees and expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the iShares, including applicable SEC registration fees. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

[32] In Amendment No. 1, Amex clarified that if there is no London silver fix price on that day, the BNY will use the most recently announced London silver fix price unless the BNY, in consultation, with the Sponsor (Barclays), determines such London silver fix price to be inappropriate.

Barclays, in consultation with the BNY, may determine that an alternative publicly available pricing benchmark more fairly represents the commercial value of silver held by the Trust. In the case of a temporary disruption of the London silver fix price, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act to be submitted to the Commission. The Exchange submits that for a temporary disruption of the London silver fix, a determination by Barclays, in consultation with the BNY, to use an alternative pricing source for silver, is appropriate. However, the Exchange represents that if the use of an alternative pricing source for the London silver fix price is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act.

the Trust from the total value of silver and all other assets of the Trust. This adjusted NAV is then used to compute the Sponsor's fees that are calculated from the value of Trust assets. Then to determine the final NAV, BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. BNY will calculate the NAV per share by dividing the NAV by the number of Silver Shares outstanding.

After the NAV is determined, at or about 4 p.m. each business day, BNY will then determine the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. that day. BNY will also at the same time determine an ''Indicative Basket Silver Amount'' that Authorized Participants can use as an indicative amount of silver to be deposited for issuance of the Silver Shares on the next business day. Thus, although Authorized Participants place orders to purchase Silver Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. or shortly thereafter.

Shortly after 4 p.m. each business day, BNY and the Sponsor will disseminate the NAV for the Silver Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by BNY to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site at *http://www.iShares.com*. The Amex will also disclose the NAV, Basket Silver Amount, and Indicative Basket Silver Amount on its Web site.

The Sponsor fee, in the absence of any extraordinary expenses and liabilities, is established at 0.50% of the net assets of the Trust. As a result, assuming there is no extraordinary movement in the intra-day market price of silver, the amount of silver by which the Basket Silver Amount will decrease each day will be predictable (*i.e.*, 1/365th of the net asset value of the Trust multiplied by 0.50%). Given the anticipated predictability of the daily decline in the Basket Silver Amount, as stated, BNY will disclose and disseminate the Indicative Basket Silver Amount for the next business day shortly after 4 p.m. Authorized Participants may use the Indicative Basket Silver Amount as guidance regarding the amount of silver expected to be deposited with the custodian, JP Morgan Chase, in connection with the issuance of Silver Shares on the next business day.

As a result, the amount of silver required for the Basket Silver Amount is not disseminated during the trading day to correspond to changes in the value of silver as measured by spot silver prices.[33] Before 4 p.m., the Authorized Participants may use the Indicative Basket Silver Amount published by the Sponsor and BNY the day before as guidance in respect of the amount of silver that they may expect to be required to deposit. But if the Indicative Basket Silver Amount published by the Sponsor and BNY turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by the Sponsor), the amount actually determined by BNY will control.

3. Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Amex. While the Silver Shares will trade on the Exchange until 4:15 p.m. ET, the Exchange states that liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Silver Shares may widen as a result of reduced liquidity.[34]

The Exchange believes that Silver Shares will not trade at a material discount or premium to the underlying silver held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Basket Aggregations, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. If the price of the Shares deviates enough from the price of silver to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the silver that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for silver, and sell the silver in the cash market at a profit. If the Shares are expensive compared to the silver that underlies them, an arbitrageur may sell the Shares short, buy enough silver to acquire the number of Shares sold short, acquire the Shares through the creation process, and deliver the Shares to close out the short position. In both instances, the Exchange states that the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying silver.

C. Availability of Information Regarding Silver Prices

Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will be disseminated over the CTA's Network B. In addition, the Exchange states that there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.[35] Complete real-time data

[33] The Amex will disseminate via the facilities of the CTA an ''Indicative Trust Value'' at least every 15 seconds during the trading day that represents an indicative value for the Silver Shares based silver dealer pricing. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on March 9, 2006.

[34] As noted above in the section titled ''Description of the Silver Market,'' the period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich, and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

[35] In addition, EBS also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. EBS was launched in September 1993 by a group of the world's largest foreign exchange market making banks. The Exchange states that EBS is the pre-eminent provider of precious metals and foreign exchange trading solutions to the precious metals and interbank spot foreign exchange community. Approximately 500,000 ounces in gold, 4 million ounces in silver and $110 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. The shareholders of EBS include the subsidiaries of the following organizations: ABN AMRO, Bank of America,

for silver futures contracts and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at *http://www.nymex.com*. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Wall Street Journal*. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.

The Amex, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price (*i.e.*, real time information) of silver on its own public Web site at *http://www.amex.com*.[36]

D. Availability of Information Regarding Silver Shares

The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price[37] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Asked Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount: (h) the Prospectus; and (g) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. The Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV, and shares outstanding. As stated, the Trust Web site will also provide a real time indicative silver spot price through TheBullionDesk at *http://www.thebulliondesk.com*.[38] Notwithstanding that they will be provided free of charge, the indicative spot price from TheBullionDesk on the Trust Web site and the Indicative Trust Value per Share disseminated via the CTA will be provided essentially on a real-time basis.[39] The Exchange will also make available on its Web site daily trading volume, closing prices, NAV, and the Basket Silver Amount, and the Indicative Basket Silver Amount. The London silver fix price is readily available from the LBMA at *http://www.lbma.org.uk*, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.amex.com* to the Trust's Web site at *http://www.iShares.com*.

E. Dissemination of Indicative Trust Value

As noted above, BNY calculates the NAV of the Silver Trust once each trading day. In addition, BNY causes to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Silver Shares in Basket Aggregations. In addition, other investors can request such information directly from the BNY.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Participants wishing to create or redeem Silver Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (the ''Indicative Trust Value''). The Indicative Trust Value will be disseminated on a per Silver Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Trust Value will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver from silver dealer pricing.[40] The Indicative Trust Value on a per Silver Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Silver Shares trading on the Exchange or the creation or redemption of Silver Shares. In addition, the Trust's Web site at *http://www.iShares.com* will also provide from TheBullionDesk continuously updated bids and offers indicative of the spot price of silver in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of silver.

G. Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares. The continued listing criteria provides for the delisting or removal from listing of the Silver Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Silver Shares: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Silver Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Silver Shares issued and outstanding; or (iii) if the market value of all Silver Shares is less than $1,000,000.
- If the value of the underlying silver is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated silver value.

Barclays, Citibank, Commerzbank, Credit Suisse First Boston, Lehman Brothers, HSBC, JPMorgan Chase, The Royal Bank of Scotland, S-E-Banken, UBS AG and the Minex Corporation of Japan. *See http://www.ebs.com*.

[36] The Trust Web site's silver spot price will be provided by TheBullionDesk at *http://www.thebulliondesk.com*. The Amex will provide a link to the Trust Web site. TheBullionDesk is not affiliated with the Trust, Sponsor, Custodian or the Exchange. The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate, as noted above in the discussion titled ''Availability of Information Regarding Silver Prices,'' that there are other sources for obtaining the silver spot price. In the event that, during Amex trading hours, the Trust Web site should cease to provide this indicative silver spot price from an unaffiliated source and the intraday ''Indicative Trust Value'' of the Shares is not disseminated via the CTA, the Exchange will delist the shares. *See* ''Criteria for Initial and Continued Listing,'' below.

[37] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[38] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

[39] These values are subject to an average delay of 5 to 10 seconds. The Indicative Trust Value per Share will not be posted on the Trust's Web site but will be disseminated via the facilities of the CTA. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on March 8, 2006.

[40] *See supra* note 33.

• The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 150,000 Silver Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issues receipts and exchange-traded funds (''ETFs''). It is anticipated that the initial price of a Silver Share will be approximately $91.[41] The Exchange believes that the anticipated minimum number of Silver Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Trust's objective to seek to provide a simple and cost effective means of making an investment similar to an investment in silver.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[42]

H. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Silver Trust is $5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide (''Company Guide'') will be based upon the year-end aggregate number of shares in all series of Silver Trusts outstanding at the end of each calendar year.

I. Trading Rules

Silver Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in Silver Shares. Silver Shares will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Silver Shares as eligible for this treatment.[43]

Silver Shares will be deemed ''Eligible Securities,'' as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Silver Shares made in connection with the creation and redemption of Silver Shares will not be subject to the prohibitions of Amex Rule 190.[44] Unless exemptive or no-action relief is available, Silver Shares will be subject to the short sale rule, Rule 10a–1 and Regulation SHO under the Act.[45] If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Silver Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Silver Shares into parity with the underlying silver and/or futures price. Commentary .01 to Amex Rule 1203A sets forth this limited exception to Amex Rule 170.

Amex Rule 1203A relating to certain specialist prohibitions addresses potential conflicts of interest in connection with acting as a specialist in the Silver Shares. Specifically, Amex Rule 1203A provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Silver Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying silver, related silver futures contract or option, or any other related silver derivative. An affiliated person of the specialist, consistent with Amex Rule 193, may be afforded an exemption to act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying silver, related silver futures or options, or any other related silver derivative. In particular, Amex Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A(a) provides that the member organization acting as specialist in Commodity-Based Trust Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (see Rule 170). In addition, the member organization acting as specialist in Commodity-Based Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity-Based Trust Shares shall trade in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.[46]

Amex Rule 1204A(b) also ensures that specialists handling the Silver Shares provide the Exchange with all the necessary information relating to their

[41] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (updating initial price of a Silver Share that initially will represent 10 ounces of silver).

[42] *See* The Exchange represents that Silver Shares qualifies for the exemption in Rule 10A–3(c)(7) under the Act.

[43] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[44] *See* Commentary .05 to Amex Rule 190.

[45] The Silver Trust has requested relief in connection with the trading of Silver Shares from the operation of the short sale rule, Rule 10a–1, and Regulation SHO under the Act.

[46] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(a)).

trading in physical silver, related silver futures contracts and options thereon, or any other silver derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Amex Rule 1204A(c) also prohibits the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivative (including the Silver Shares).[47]

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in Silver Shares. First, the Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange may halt trading in Silver Shares if conditions in the underlying silver market have caused disruptions and/or lack of trading. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. The Exchange will halt trading in the Shares if the Trust Web site (to which Amex will link) ceases to provide the value of the silver updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or the Exchange ceases to provide via the CTA the Indicative Trust Value per Share updated at least every 15 seconds.[48]

J. Information Circular

The Amex will distribute an Information Circular (the ''Circular'') to its members in connection with the trading of Silver Shares. The Circular, will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Silver Shares are, notify members and member organizations about the procedures for creation and redemption of Silver Shares in a basket, the requirement, as described below, that members and member firms deliver a prospectus to investors purchasing the Silver Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per share Indicative Trust Value, NAV, and other information pertaining to the Shares, including trading information, trading halt procedures, and applicable suitability rules. For example, in the Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of Silver Shares in Basket Aggregations are described in the Prospectus and that Silver Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof. Similarly, the Information Circular will advise members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Silver Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Amex members purchasing Silver Shares from the Trust for resale to investors will deliver a prospectus to such investors.

The Circular will also explain that the Silver Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Silver Shares comprising a basket will represent a decreasing amount of silver due to the sale of the Silver Trust's silver to pay Trust expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Silver Shares. The Exchange notes that pursuant to Amex Rule 411 (Duty to Know and Approve Customers), members and member organizations are required in connection with recommending transactions in the Silver Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

K. Surveillance

The Exchange represents that its surveillance procedures applicable to trading in the proposed Silver Shares will be similar to those applicable to the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issued receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. For intermarket surveillance purposes, the Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts. The Exchange submits that its surveillance procedures are adequate to properly monitor the trading of the Shares.

Also, as noted above, the Exchange states that Amex Rule 1204A(b), which requires that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative, will facilitate surveillance of specialist handling Silver Shares.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent

[47] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(c)).

[48] In the event such spot price of silver or Indicative Trust Value is no longer calculated or disseminated during the time the Silver Shares trade on Amex, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

with the Act[49] and the rules and regulations thereunder applicable to a national securities exchange.[50]

The Commission received a total of 255 comment letters on the Exchange's proposed rule change. Of these 255 comment letters, 248 comments supported the proposed rule change and 7 comments opposed the proposed rule change. In general, those commenters opposed to the proposed rule change argued that approval of the Silver Shares would result in serious liquidity problems in the silver market.[51] In particular, these commenters contended that the Silver Shares would negatively impact the silver market because their creation would require the holding of silver in allocated accounts, which would drain large amounts of silver from the open market and cause higher prices for silver products.[52] Furthermore, the commenters asserted that the higher silver prices caused by the creation of the Silver Shares would cause the loss of jobs specific to the silver industry.[53]

The Exchange responded to these comments by stating that it believes that the listing and trading of Silver Shares will make the market for silver more efficient and transparent by providing investors with an easier and more cost-effective alternative for investing in silver. The Exchange asserts that a transparent marketplace for Silver Shares will allow for a more accurate representation of the supply and demand for silver, and therefore, a more accurate market price.[54] The Exchange also disagrees with some commenters' assertions that the Trust will reduce the amount of silver in the marketplace. In this regard, the Exchange notes that, at the commencement of trading, the Exchange will require 150,000 Silver Shares to be outstanding, which will require 1.5 million ounces of silver to be deposited with the custodian of the Trust. The Exchange states that Trust assets will grow only to the extent that demand for the Silver Shares grows and that a wide variety of factors are capable of influencing supply and demand for silver.[55]

The Commission agrees with Amex that, like other derivative products, the Silver Shares will increase the efficiency and transparency of the market for the underlying instrument, *i.e.*, silver. In this regard, the Commission finds that the proposed rule change is in the public interest.[56] The Commission also does not believe that the Silver Shares are likely to cause serious liquidity problems in the silver market such that approval of the proposed rule change is not consistent with the Act.[57]

A. Surveillance

The Commission also finds that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices.[58] In its response to comment letters, the Amex represents that it has safeguards to ensure that the trading of the Silver Shares is fair and consistent with the operation of a public marketplace and the protection of investors and that surveillance procedures at the Exchange serve to deter and detect potential misconduct and manipulative acts by members and investors.[59]

In addition, the Exchange has an information sharing agreement with NYMEX for the purpose of providing information in connection with trading in or related to silver futures contracts.[60] Information sharing agreements with markets trading securities underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. Although an information sharing agreement with the OTC silver market is not possible, the Commission believes that Amex's information sharing agreement with NYMEX (of which COMEX is a division) and Exchange Rules 1203A and 1204A, create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Silver Shares.

The Exchange also represents that it will review firms that have been actively acquiring or selling Silver Shares.[61] Moreover, Amex Rule 1204A will require that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative. The Commission believes these reporting and record-keeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. Amex Rule 1204A will also prohibit the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivatives (including the Silver Shares). In addition, Amex Rule 1203A will prohibit the specialist in the Silver Shares from being affiliated with a market maker in physical silver, silver futures, or options on silver futures unless adequate information barriers are in place and approved by the Exchange.

B. Dissemination of Information About the Silver Shares

The Commission finds that sufficient venues for obtaining reliable silver price information exist so that investors in the Silver Shares can adequately monitor the underlying spot market in silver relative to the NAV of their Silver Shares. As discussed more fully above, the Commission notes that there is a considerable amount of silver price and silver market information available 24 hours per day on public Web sites and through professional and subscription services. The Trust at its Web site *(http://www.iShares.com)* will provide a real time indicative silver spot price through TheBullionDesk at *http://www.thebuilliondesk.com.* In addition, the Trustee will disseminate each day an estimated amount representing the Basket Silver Amount. The Exchange will also disseminate through the CTA the Indicative Trust Value on a per share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The last sale price for Silver Shares will also be disseminated on a real-time basis over the CTA.

The Commission also notes that the Trust's Web site at *http://www.iShares.com* is and will be publicly accessible at no charge and will contain the NAV of the Silver Shares and the Basket Silver Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a

[49] 15 U.S.C. 78f(b).

[50] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[51] *See* letters from Congressman J. Gresham Barrett (3rd District, SC) to Christopher Cox, Chairman, Commission, dated February 16, 2006; Paul A. Miller, Executive Director, Silver Users Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006; John Patrick, Vice President, Fujifilm America, Inc., to Nancy M. Morris, Secretary, Commission, dated February 7, 2006; James F. Kirsch, President and Chief Executive Officer, Ferro Corporation, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006; a Memorandum from the CPM Group regarding Silver Inventories, dated January 30, 2006; a Web Comment from Justin D. Reynolds, dated January 29, 2006; and a Web Comment from George Bloom, Jr., dated January 29, 2006. A Web Comment from Theodore Butler, dated February 6, 2006, made positive and negative conclusions about the proposed rule change.

[52] *Id.*

[53] *Id.*

[54] *See* Wolkoff Letter, *supra* note 7.

[55] *Id.*

[56] 15 U.S.C. 78f(b)(5).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78f(b)(5).

[59] *See* Wolkoff Letter, *supra* note 7.

[60] *Id.*

[61] *See* Wolkoff Letter, *supra* note 7.

calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site, to which the Amex will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Silver Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Silver Shares are consistent with the Act. For example, Silver Shares will be subject to Amex rules governing trading halts, responsibilities of the specialist, and customer suitability requirements. In addition, the Silver Shares will be subject to Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares.

The Commission believes that listing and delisting criteria for the Silver Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Silver Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Silver Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (SR–Amex–2005–072), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4268 Filed 3–23–06; 8:45 am]

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[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53522; File No. SR–ISE–2006–09]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees

March 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On March 15, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt a new method for charging Session/API Fees. The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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 purpose of this proposed rule change is to establish a new method for charging Session/API (''login'') fees to members.[6] ISE currently charges members a fee for each authorized login that a member utilizes for quoting or order entry, with a lesser charge for authorized logins used for the limited purpose of ''listening'' to system broadcasts.[7] This proposed rule change seeks to further differentiate authorized logins in an effort to promote and encourage more efficient quoting. The Exchange proposes the following three categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (*e.g.*, sending and receiving P and P/A orders, laying off orders, etc.)); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 added clarifying language to the purpose section of the filing and made a technical change to the text of Exhibit 5 (ISE's Schedule of Fees). The correction to Exhibit 5 does not affect the fees covered by this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] ISE represents that the fees proposed in this filing only apply to ISE members. The ISE Central Exchange System uses an open Application Programming Interface (API). ISE Members program to ISE's API in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The ISE Central Exchange System is the heart of ISE's marketplace, processing quotes from market makers, receiving orders from Electronic Access Members, tracking activity in the underlying markets, executing trades in the matching engine, and broadcasting trade details to the participating members.

[7] Prior to this filing, members were charged a fee of $250 to ''listen'' to system broadcasts. This fee as it applied to market makers, which was previously listed under ''EAM / Trade Review Terminal,'' now appears under ''Market Makers''—''Listening.''

[8] The Exchange issued a Market Information Circular and a Technical Bulletin on February 3, 2006 and February 9, 2006, respectively, to notify members of the change that is the subject of this filing. The Exchange further notes that this filing was considered and approved by the ISE's Market Maker Advisory Committee. The Exchange believes that the proposed fee changes are reasonable in that they are closely tailored to ISE's technology costs.

Under the proposed rule change, each ISE market maker will receive an allocation of 1,000,000 quotes per day per user. If a firm submits more quotes than those allocated, *i.e.*, 1,000,000 quotes per user as measured on an average in a single month, the firm will be charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker firm across all bins will be divided by the number of trading days, resulting in the average quotes per day. This number will then be divided by 1,000,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Members will be invoiced for the greater of (a) the greatest number of users authorized to login into the system, or (b) the number of implied users based on quotes. For example, a firm with 20 users has an allocation of 20 million quotes per day. If that firm submits an average of 18 million quotes per day during a single month then the firm will be invoiced for all 20 users. If that firm submits an average of 21.3 million quotes per day during a single month, it will be invoiced for 22 users (21.3 users rounded up).

In order to facilitate maximum utilization of a firm's quote allocation, firms that submit more quotes than the allocated 1,000,000 quotes per day will receive an e-mail on a daily basis informing them that they will incur additional fees if they continue to submit in excess of the 1,000,000 daily quote allocation per user.

ISE proposes to charge $950 per month for each quoting session for up to 1,000,000 quotes per day, on average for a month. Members will be charged an additional user fee of $950 for each incremental usage of up to 1,000,000 quotes per day per user. The Exchange further proposes to charge members a fixed fee of $750 per month for each order entry session and a fixed fee of $175 per month for each listening session, regardless of the number of quotes submitted.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[9] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, the Exchange believes these fees will encourage and promote efficient quoting among the Exchange's market making firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2006–09 and should be submitted on or before April 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

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[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] The effective date of the original proposed rule is February 1, 2006. The effective date of Amendment No. 1 is March 15, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 15, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53520; File No. SR–PCX–2005–117]

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of Shares of the iShares® Silver Trust Pursuant to Unlisted Trading Privileges

March 20, 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 11, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (''Exchange''),[3] through its wholly owned subsidiary PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.), has filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange proposes to amend the rules governing Archipelago Exchange, LLC (n/k/a NYSE Arca, LLC), the equities trading facility of NYSE Arca Equities, Inc. On March 3, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary, NYSE Arca Equities, Inc., proposes to amend its rules governing the Archipelago Exchange (n/k/a NYSE Arca MarketPlace), the equities trading facility of NYSE Arca Equities, Inc. The Exchange proposes to trade, pursuant to unlisted trading privileges (''UTP''), shares (''Shares'') of the iShares® Silver Trust (the ''Trust'').[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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 trade the Shares pursuant to UTP under NYSE Arca Equities, Inc. Rule 8.201. Under NYSE Arca Equities, Inc. Rule 8.201, which the Exchange adopted in January 2005,[6] the Exchange may propose to list and/or trade pursuant to UTP ''Commodity-Based Trust Shares.''[7] The Exchange currently trades shares of the iShares COMEX Gold Trust[8] and the streetTRACKS Gold Trust[9] pursuant to UTP under NYSE Arca Equities, Inc. Rule 8.201. The American Stock Exchange LLC (''Amex'') has filed a rule proposal to list and trade the Shares,[10] which the Commission approved on March 20, 2006.[11]

The Shares represent beneficial ownership interests in the net assets of the Trust consisting primarily of silver bullion (''silver''). The investment objective of the Trust is for the Shares to reflect the performance of the price of silver, less the Trust's expenses.

(a) The Shares

A description of the silver and the Shares, the operation of the Trust, and other information about the Shares is set forth in the Amex Notice and Amex Order. To summarize, issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof (''Baskets'' or ''Basket Aggregations''). The Trust will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[12] with Barclays Global Investors International, Inc. (the ''Sponsor'') and The Bank of New York (the ''Trustee'' or ''BNY'').

Baskets will be issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the ''Basket Silver Amount'') will be determined on each business day by the Trustee.[13] The Basket Silver Amount necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual.[14] Authorized Participants that wish to purchase a Basket must transfer the Basket Silver Amount to the Trust in exchange for a Basket of Shares. Baskets are then separable upon issuance into the Shares that will be traded on NYSE Arca MarketPlace on a UTP basis.[15]

The Shares will not be individually redeemable but will only be redeemable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Pacific Exchange, Inc. (''PCX''), filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect Archipelago's recent acquisition of PCX and the merger of the NYSE with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect these transactions. Telephone conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on March 10, 2006.

[4] In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 replaces and supplements the information provided in various sections of the Exchange's Form 19b–4.

[5] iShares® is a registered trademark of Barclays Global Investors, N.A.

[6] *See* Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (approving the listing and trading of Commodity-Based Trust Shares and trading of shares of the iShares COMEX Gold Trust pursuant to UTP).

[7] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. Unlike trust issued receipts (''TIRs''), Commodity-Based Trust Shares hold one or more physical commodities, rather than one or more discrete securities.

[8] *See* supra, note 7.

[9] *See* Securities Exchange Act Release No. 34–51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP).

[10] *See* Securities Exchange Act Release No. 53130 (January 17, 2006), 71 FR 3570 (January 23, 2006) (SR–AMEX–2005–072) (''Amex Notice'').

[11] *See* Securities Exchange Act Release No. 53521 (March 20, 2006) (''Amex Order'').

[12] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company Participant or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

[13] On each business day, the Trustee will make available immediately prior to the opening of trading on the Amex, the Indicative Basket Silver Amount for the creation of a Basket. The Sponsor will also make the next day's Indicative Basket Silver Amount available on the Trust's Web site at *http://www.iShares.com* shortly after 4 p.m. ET each business day. The Amex stated that the Basket Silver Amount, Indicative Basket Silver Amount and net asset value (''NAV'') will be publicly available simultaneously to all market participants (to avoid any informational advantage) on either the Trust's Web site or the Amex Web site. These items will also be communicated to Authorized Participants via facsimile or electronic mail message.

[14] According to the Amex Notice, the initial Basket Silver Amount is 500,000 ounces of silver (with each Share initially representing 10 ounces of silver). The number of ounces of silver required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the silver shares comprising a basket will represent a decreasing amount of silver due to the sale of the Silver Trust's silver to pay Trust expenses.

[15] Shares are separate and distinct from the underlying silver comprising the portfolio of the Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying silver.

in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 50,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Silver Amount in exchange for each Basket surrendered. The operation of the Trust and creation and redemption process is described in more detail in the Amex Notice and Order.

When calculating the net asset value (''NAV'') per Share, the Trustee will value the silver held by the Trust on the basis of the day's announced London silver fix price. The calculation methodology for the NAV is described in more detail in the Amex Notice.

After the NAV is determined, at or about 4 p.m. Eastern Time (''ET'') each business day, the Trustee will then determine the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. ET that day. The Trustee will also at the same time determine an ''Indicative Basket Silver Amount'' that Authorized Participants can use as an indicative amount of silver to be deposited for issuance of the Shares on the next business day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. ET or shortly thereafter.

After 4 p.m. ET each business day, the Trustee and the Sponsor will disseminate the NAV for the Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. ET during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by the Trustee to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site at *http://www.iShares.com* (to which the Exchange will provide a link).

The Sponsor fee, in the absence of any extraordinary expenses and liabilities, is established at 0.50% of the net assets of the Trust. As a result, assuming there is no extraordinary movement in the intra-day market price of silver, the amount of silver by which the Basket Silver Amount will decrease each day will be predictable (*i.e.*, 1/365th of the net asset value of the Trust multiplied by 0.50%). Given the anticipated predictability of the daily decline in the Basket Silver Amount, as stated, the Trustee will disclose and disseminate the Indicative Basket Silver Amount for the next business day shortly after 4 p.m. ET. Authorized Participants may use the Indicative Basket Silver Amount as guidance regarding the amount of silver expected to be deposited with the custodian, JP Morgan Chase Bank, N.A., London Branch, in connection with the issuance of Shares on the next business day.

As a result, the amount of silver required for the Basket Silver Amount is not disseminated during the trading day to correspond to changes in the value of silver as measured by spot silver prices. Before 4 p.m. ET, Authorized Participants may use the Indicative Basket Silver Amount published by the Sponsor and the Trustee the day before as guidance in respect of the amount of silver that they may expect to be required to deposit. But if the Indicative Basket Silver Amount published by the Sponsor and the Trustee turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by the Sponsor), the amount actually determined by the Trustee will prevail, resulting in a greater decrease in the Basket Silver Amount.

(b) Dissemination of Information About Silver Prices, the Shares, and the Indicative Trust Value

1. Availability of Information Regarding Silver Prices

Although the spot price of silver will not be disseminated over the facilities of Consolidated Tape Association (''CTA''), the last sale price for the Shares, as is the case for all equity securities traded on the Exchange, will be disseminated over the CTA's Network B. In addition, there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the Web site of the London Bullion Market Association (''LBMA''). Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.[16] Complete real-time data for silver futures contracts and options prices traded on the COMEX, a division of the New York Mercantile Exchange, Inc. (''NYMEX''), is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at *http://www.nymex.com.* The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Wall Street Journal*. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.

The Exchange will provide at no charge on its Web site at *http://www.archipelago.com,*[17] via a link to the Trust's Web site, updated bids and offers indicative of the spot price (*i.e.*, real time information) of silver.[18]

2. Availability of Information Regarding Silver Shares

The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (g) the

[16] According to the Amex Notice, EBS, a London-based provider of foreign exchange trading solutions, also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Approximately 4 million ounces in silver are traded each day over the EBS trading platform. *See* Amex Notice, footnote 34; *see also http://www.ebs.com.*

[17] NYSE Arca Inc.'s new Web site is *http://www.nysearca.com.* Telephone conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on March 20, 2006.

[18] The Trust Web site's silver spot price will be provided by TheBullionDesk at *http://www.thebulliondesk.com.* The Exchange will provide a link to the Trust Web site. TheBullionDesk is not affiliated with the Trust, Sponsor, Custodian or the Exchange. The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate that there are other sources for obtaining the silver spot price.

Prospectus; and (h) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. According to the Amex Notice, the Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (''ITV'') (as discussed below), recent NAV, and shares outstanding. As stated, the Trust Web site will also provide a real-time indicative silver spot price through TheBullionDesk at *http://www.thebulliondesk.com*, which will be used to calculate the ITV, according to the Amex Notice. Notwithstanding that they will be provided free of charge, the indicative spot price from the BullionDesk on the Trust Web site and the ITV per Share disseminated via the CTA, will be provided essentially on a real-time basis.[19]

The Exchange will make available on its Web site, *http://www.archipelago.com*, daily trading volume, closing prices, NAV, and the Basket Silver Amount. The London silver fix price is readily available from the LBMA at *http://www.lbma.org.uk*, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.archipelago.com* to the Trust's Web site at *http://www.iShares.com*.

3. Dissemination of Indicative Trust Value

As noted above, the Trustee calculates the NAV of the Trust once each trading day. In addition, the Trustee causes to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Shares in Basket Aggregations. In addition, other investors can request such information directly from the Trustee.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Persons wishing to create or redeem Shares, the Amex will disseminate through the facilities of CTA an updated ITV. The ITV will be disseminated on a per Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The ITV will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver. The ITV on a per Share basis should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the ITV based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Shares trading on the Exchange or the creation or redemption of Shares. In addition, as noted above, the Trust's Web site at *http://www.iShares.com* will also provide from TheBullionDesk updated bids and offers indicative of the spot price of silver in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of silver.

(c) UTP Criteria

The Exchange will cease trading in the Shares if (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities, Inc. Rule 7.12 or a halt because the ITV or the value of the underlying silver is no longer available as described in the Amex Order; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities, Inc. Rule 7.34(a), except that the Shares will not be eligible to trade during the Opening Session (4:00 a.m. to 9:30 a.m. ET) or the Late Trading Session (4:15 p.m. to 8 p.m. ET). The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities, Inc. Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities, Inc. Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. NYSE Arca Equities, Inc. Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying silver, related futures or options on futures or any other related derivative (including the Shares). In addition, NYSE Arca Equities, Inc. Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying silver, related futures or options on futures, or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities, Inc. Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[20] In addition, the Exchange will cease trading the Shares if (a) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities, Inc. Rule 7.12 or a halt because the ITV or the value of the underlying silver is no longer available as described in the Amex Order, or (b) the listing market delists the Shares.

Shares will be deemed ''Eligible Listed Securities,'' as defined in NYSE

[19] That these values are subject to an average delay of 5 to 10 seconds.

[20] *See* NYSE Arca Equities, Inc. Rule 7.12.

Arca Equities, Inc. Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities, Inc. Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a-1 and Regulation SHO under the Act.[21] If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

(e) Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust[22] to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, as noted above, pursuant to NYSE Arca Equities, Inc. Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Also, the Exchange has an Information Sharing Agreement with the NYMEX for the purpose of sharing information in connection with trading in or related to COMEX silver futures contracts.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities, Inc. Rule 9.2(a),[23] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the ITV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a basket or to be delivered upon redemption of a basket will gradually decrease over time because the Silver Shares comprising a basket will represent a decreasing amount of silver due to the sale of the Silver Trust's silver to pay Trust expenses.[24] The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[25] in general and furthers the objectives of Section 6(b)(5),[26] 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 transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2005–117. This file number should be included on the

[21] According to the Amex Notice, the Silver Trust has requested relief from the Commission in connection with the trading of the Shares from the operation of the short sale rule, Rule 10a-1, and Regulation SHO under the Act.

[22] *See* supra, note 10.

[23] The Exchange has proposed to amend NYSE Arca Equities, Inc. Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. *See* Amendment No. 1 to SR–PCX–2005–115 (November 21, 2005).

[24] Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on March 10, 2006.

[25] 15 U.S.C. 78s(b).

[26] 15 U.S.C. 78s(b)(5).

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 NYSE Arca, Inc. 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–PCX–2005–117 and should be submitted on or before April 14, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[29] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[30] The Commission notes that it previously approved the listing and trading of the Shares on the Amex.[31] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[32] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSE Arca Equities, Inc. rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.[33]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[34] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding Silver Shares will be disseminated via the CTA/CQS. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable silver price information and thereby monitor the underlying spot market in silver relative to the NAV of their Shares. Additionally, the Amex will make available via the CTA an updated ITV at least every 15 seconds during regular trading hours of 9:30 a.m. to 4:15 p.m. ET.

In connection with the Exchange's UTP of the Shares, the Exchange will cease trading in the Shares if: (a) The listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities, Inc. Rule 7.12 or a halt because the ITV or the value of the underlying silver is no longer available; or (b) if the primary market delists the Shares. The Commission notes that, if Silver Shares were to be delisted by Amex, the Exchange would no longer have authority to trade Silver Shares pursuant to this order.

In support of the portion of the proposal, the Exchange has made the following representations:

1. NYSE Arca, Inc. has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. NYSE Arca, Inc. surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. NYSE Arca, Inc. will distribute an Information Bulletin to its ETP Holders prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

4. NYSE Arca, Inc. will require that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus and that ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

5. The Exchange will cease trading in the Shares if: (a) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities, Inc. 7.12 or a halt because the ITV or the value of the underlying silver is no longer available as described in the Amex Order; or (b) if the primary market delists the Shares.

This approval order is conditioned on NYSE Arca, Inc.'s adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the Amex is consistent with the Act.[35] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–2005–117), as amended, is hereby approved on an accelerated basis.[36]

[27] 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).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78*l*(f).

[30] 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.

[31] *See* Amex Order.

[32] 17 CFR 240.12f–5.

[33] *See* NYSE Arca Equities, Inc. Rule 7.34.

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[35] *See* Amex Order.

[36] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4270 Filed 3–23–06; 8:45 am]

BILLING CODE 8010–01–P

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10428 and # 10429; Missouri Disaster # MO–00002]

Notice of a Disaster Declaration

AGENCY: U.S. Small Business Administration.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1631–DR), dated March 16, 2006.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: March 11, 2006 through March 13, 2006.

Effective Date: March 16, 2006.

Physical Loan Application Deadline Date: May 15, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: December 15, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on March 16, 2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Christian, Hickory, Johnson, Monroe, Perry, Pettis, Randolph, Saline, and Ste. Genevieve.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Audrain, Benton, Bollinger, Boone, Camden, Cape Girardeau, Carroll, Cass, Chariton, Cooper, Dallas, Douglas, Greene, Henry, Howard, Jackson, Jefferson, Lafayette, Lawrence, Macon, Madison, Marion, Morgan, Polk, Ralls, Shelby, St. Clair, St. Francois, Stone, Taney, and Webster.

Illinois: Jackson, Monroe, Randolph, and Union.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	7.408
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–4261 Filed 3–23–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10316 and #10317]

Oklahoma Disaster Number OK–00002

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1623–DR), dated 01/10/2006.

Incident: Severe Wildfire Threat.

Incident Period: 11/27/2005 and continuing.

Effective Date: 03/13/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 10/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 01/10/2006, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–4258 Filed 3–23–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10322 and #10323]

Texas Disaster Number TX–00097

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1624–DR), dated 01/11/2006.

Incident: Extreme Wildfire Threat.

Incident Period: 12/01/2005 and continuing.

Effective Date: 03/13/2006.

Physical Loan Application Deadline Date: 04/12/2006.

EIDL Loan Application Deadline Date: 10/11/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 01/11/2006, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/12/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–4259 Filed 3–23–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10322 and #10323]

Texas Disaster Number TX–00097

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1624–DR), dated 01/11/2006.

Incident: Extreme Wildfire Threat.

Incident Period: 12/01/2005 and continuing.

Effective Date: 03/17/2006.

Physical Loan Application Deadline Date: 04/12/2006.

EIDL Loan Application Deadline Date: 10/11/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 01/11/2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Anderson; Bastrop; Deaf Smith; Parker.

Contiguous Counties:

New Mexico: Curry; Quay.

Texas: Caldwell; Castro; Cherokee; Fayette; Freestone; Henderson; Houston; Lee; Leon; Oldham Parmer; Potter; Randall; Travis; Williamson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–4260 Filed 3–23–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of denial to waive the Nonmanufacturer Rule for Water Treatment Chemicals.

SUMMARY: The U.S. Small Business Administration (SBA) is denying a request for a waiver of the Nonmanufacturer Rule for Water Treatment Chemicals based on our recent discovery of small business manufacturers for these classes of products. Denying this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program to provide the products of small business manufacturers or processors on such contracts.

DATES: This notice of denial is effective April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on December 12, 2005 to waive the Nonmanufacturer Rule for Water Treatment Chemicals. In response, on January 18, 2006, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Water Treatment Chemicals. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of these classes of products. In response to that January 18, 2006 notice, SBA received comments from small business manufacturers indicating that they have furnished these products to the Federal government. Accordingly, based on the available information, SBA has determined that there are small business manufacturers of these classes of products, and, is therefore denying the class waiver of the Nonmanufacturer Rule for Water Treatment Chemicals, NAICS codes 325188 and 325199.

Dated: March 20, 2006.

Karen C. Hontz,

Associate Administrator for Government Contracting.

ATTACHMENT A: PRODUCT LISTING

SIN 524–2 FUEL OIL TREATMENT CHEMICALS

FuelSolv FS915	FuelSolv FS917	FuelSolv MGP3275	FuelSolv PB901.
FuelSolv FS916		FuelSolv OMG8500	

SIN 524–2 BOILER TREATMENT CHEMICALS

Aquamax IEC2	OptiGuard MCA624	Optisperse CPS501	Steamate NA2140.
Aquamax IEC800	RediFeed OptiGuard	Optisperse CPS502	Steamate NA2260.
CorTrol IS100	MCA630	Optisperse CPS503	Steamate NA700.
CorTrol IS102	OptiGuard MCM610	Optisperse CPS504	Steamate NA701.
CorTrol IS103	RediFeed OptiGuard	Optisperse PO400	Steamate NA702.
CorTrol IS104	MCM955	Optisperse PO423	Steamate NA703.
CorTrol IS3000	OptiGuard MCP600	Optisperse PO424	Steamate NA707.
CorTrol OS131	OptiGuard MCP601	Optisperse SP530	Steamate NA711.
CorTrol OS133	RediFeed OptiGuard	Optisperse SP531	Steamate NA713.
CorTrol OS5300	MCP953	Optisperse SP532	Steamate NA715.

ATTACHMENT A: PRODUCT LISTING—Continued

CorTrol OS7780	Optisperse ADJ560 Optisperse ADJ561 Optisperse APO200 Optisperse APO520 Optisperse AP301 Optisperse AP302 Optisperse CL361 Optisperse CL362 Optisperse CL363 Optisperse CPS500	Steamate FM760 Steamate FM761 Steamate FM1000 Steamate NA0240 Steamate NA0540	
SIN 524–2 COOLING WATER TREATMENT CHEMICALS			
Continuum AEC213 Continuum AEC216 Continuum AEC217 Continuum AEC218 Continuum AEC223 Continuum AEC225 Continuum AEC230 Continuum AEC231 Continuum AEC232 Continuum AT201 Continuum AT202 Continuum AT203 Continuum AT205 Continuum AT209 Continuum AT220 Depositrol PY505	Depositrol PY5200 Depositrol SF502 Depositrol SF504 Dianodic DN300 Dianodic DN302 Dianodic DN310 Ferroquest LP7200 Ferroquest LP7202 FloGard POT802 FloGard POT807 FoamTrol AF2290 FoamTrol AF706 FoamTrol AF724 FoamTrol AF1440	Inhibitor AZ604 Inhibitor AZ660 Inhibitor AZ8101 Inhibitor PM508 Inhibitor PM608 Inhibitor PM609 Inhibitor PM610 Kleen AC9507 RediFeed Continuum AT901 RediFeed Continuum AT902 RediFeed Spectrus OX903 Spectrus BD152 Spectrus BD1550 Spectrus NX102 Spectrus NX104	Spectrus NX106. Spectrus NX108. Spectrus NX110. Spectrus NX1104. Spectrus NX112. Spectrus NX114. Spectrus NX122. Spectrus OX101. Spectrus OX103. Spectrus OX105. Spectrus OX903. Spectrus OX909. Spectrus OX1201. Spectrus OX1240.
SIN 524–2 CLOSED SYSTEM TREATMENT CHEMICALS			
Corrshield MD400 Corrshield MD407	Corrshield NT402 Corrshield NT403 Corrshield NT411	Corrshield OR404 Ferroquest FQ7101	Ferroquest FQ7102. Ferroquest FQ7103.
SIN 524–2 MULTI FUNCTION PRODUCTS			
AE 1128P BioPlus BA900 BioPlus BA2920 BioPlus BA2921 Pot 804 KlarAid CDP 1339P	KlarAid IC 1172P KlarAid PC 1192P KlarAid PC 1195P PolyFloc AE 1115 PolyFloc AP 1100 PolyFloc AP 1120P	ProSweet OC2532. ProSweet OC2533. ProSweet OC2534. ProSweet OC2543.	

[FR Doc. E6–4247 Filed 3–23–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5351]

60-Day Notice of Proposed Information Collection: Forms DS–1998 and DS–1998E, Foreign Service Written Examination Registration Form, OMB Control Number 1405–0008

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Registration for the Foreign Service Officer Written Examination.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Human Resources, HR/REE/BEX.
- *Form Number:* DS–1998 & DS–1998-E.
- *Respondents:* Registrants for the Foreign Service Written Examination.
- *Estimated Number of Respondents:* 35,147.
- *Estimated Number of Responses:* 35,147.
- *Average Hours Per Response:* 20 minutes.
- *Total Estimated Burden:* 11,716 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from March 24, 2006.

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

- E-mail: *deanmm@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Margaret Dean, HR/REE/BEX, SA–1, 2401 E Street, NW., H–518, Washington, DC 20522.
- Fax: (202) 261–8843, Att: Margaret Dean.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Margaret Dean, HR/REE/BEX, SA–1, 2401 E Street, NW., H–518, Washington,

DC 20522, who may be reached on (202) 261–8898 or at *deanmm@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Individuals registering for the Foreign Service Written Examination will provide information about their name, age, Social Security Number, contact information, ethnicity, and very brief information on their education and work history. The information will be used to prepare and issue admission to the examination, to help improve future examinations, and to conduct research studies based on the examination results.

Methodology: Responses can be submitted via the online registration option or by mail.

Dated: February 28, 2006.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. E6–4315 Filed 3–23–06; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 5350]

30-Day Notice of Proposed Information Collection: Department of State Forms DS–98, DS–98 E, DS–99 and DS–99 E; Application for Diplomatic Exemption From Taxes; OMB Control Number 1405–0069

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for Diplomatic Exemption From Taxes.
- *OMB Control Number:* 1405–0069.
- *Type of Request:* Extension of an approved collection.
- *Originating Office:* Bureau of Diplomatic Security, Office of Foreign Missions, Diplomatic Tax and Customs Office, DS/OFM/VTC/TC.
- *Form Number:* DS–98, DS–98 E, DS–99 and DS–99 E.
- *Respondents:* Eligible foreign diplomatic or consular missions, certain foreign government organizations, and designated international organizations.
- *Estimated Number of Respondents:* 350.
- *Estimated Number of Responses:* Approximately 2419.
- *Average Hours Per Response:* 15 minutes.
- *Total Estimated Burden:* 605 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 24, 2006.

ADDRESSES: Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–7860. You may submit comments by any of the following methods:

- E-mail: *ahunt@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Ms. Irina Kaufman, DS/OFM/VTC, 3507 International Place, NW., U.S. Department of State, Washington, DC 20008, who may be reached on 202–895–3683, or by e-mail at *kaufmani@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Exemption from taxes on the use of public utilities and the purchase of gasoline and other motor fuels is enjoyed by foreign diplomatic and consular personnel on assignment in the United States under the provisions of the Vienna Conventions on Diplomatic and Consular Relations and the terms of various bilateral agreements. Under the Foreign Missions Act of 1982 (as amended), 22 U.S.C. 4301 et seq., the Department of State's Office of Foreign Missions (OFM) is given the authority to grant privileges and benefits, based on reciprocity. Forms DS–98, ''Application for Diplomatic Exemption From Taxes on Utilities'', and DS–99, ''Application for Diplomatic Exemption From Taxes on Gasoline'', provide OFM with the necessary information to provide and administer the benefit effectively and efficiently.

Methodology: Paper copies of the DS–98 and DS–99 are either hand-carried or mailed to OFM. Foreign missions can access both forms on the OFM Web site in Portable Document Format (PDF), which provides a data-input and print feature for clean and legible paper copies. An electronic submission option (DS–98 E and DS–99 E) will also be made available for both forms upon OMB approval.

Dated: January 26, 2006.

John P. Gaddis,

Deputy Assistant Secretary of State and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, Department of State.

[FR Doc. E6–4316 Filed 3–23–06; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 5349]

60-Day Notice of Information Collection: DS–3013, Application Under the Hague Convention on the Civil Aspects of International Child Abduction, OMB–1405–0076

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in

accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application Under the Hague Convention on the Civil Aspects of International Child Abduction.
- *OMB Control No:* 1405–0076.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs. CA/OCS/CI.
- *Form Number:* DS–3013.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 500 per year.
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 500 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from March 24, 2006.

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

- E-mail: *cholisms@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Margaret Cholis, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818.
- Fax: 202–736–9133.
- Hand delivery or Courier: Margaret Cholis, CA/OCS/CI, 4th floor, 2100 Pennsylvania Ave. NW., Washington, DC 20037.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Margaret Cholis, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818, who may be reached on 202–736–9157 or via email at *CholisMS@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the Department's functions as the Central Authority.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Application Under the Hague Convention on the Civil Aspects of International Child Abduction (DS–3013) is used by parents or legal guardians who are asking the State Department's assistance in seeking the return of, or access to, a child/ or children alleged to be wrongfully removed from or retained outside of the child's habitual residence and currently located in another country that is also party to the Hague Convention on the Civil Aspects of International Child Abduction (Contracting State). The application requests information regarding the identities of the applicant, the child or children, and the person alleged to have wrongfully removed or retained the child or children. In addition, the application requires that the applicant provide the circumstances of the alleged wrongful removal or retention and the legal justification for the request for return or access. The State Department, as the U.S. Central Authority, uses this information to establish, if possible, the applicants' claims under the Convention; to advise applicants about available remedies under the Convention; and to provide the information necessary to the foreign Central Authority in its efforts to locate the child or children, and to facilitate return of or access to the child or children pursuant to the Convention.

Methodology

The CA/OCS/CI contact collects the necessary information via mail, fax, or electronic submission.

Dated: March 6, 2006.

Catherine Barry,

Deputy Assistant Secretary, Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. E6–4317 Filed 3–23–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Availability of Motor Carrier Safety Assistance Program Grant Funds

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: This document announces the availability of Motor Carrier Safety Assistance Program (MCSAP) grant funding as authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of MCSAP is to reduce CMV–involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs.

DATES: Applications for Basic/Incentive grant funding should be sent to the FMCSA Division Office in the State where the applicant is located no later than August 1 of each year. Applications for FY2006 High Priority grant funds or New Entrant Safety Audit funds must be submitted to the FMCSA Division Office in the State where the applicant is located no later than April 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Lamm, Federal Motor Carrier Safety Administration, Office of Safety Programs, State Programs Division (MC–ESS), (202) 366–6830, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., ET, Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4101 of SAFETEA–LU (Pub. L. 109–59, August 10, 2005, 119 Stat. 1144) amends 49 U.S.C. 31104(a) and reauthorizes the FMCSA Motor Carrier Safety Grants funding for FY2006 through FY2009. The authorized level of funding for MCSAP is $188,000,000 for FY2006, which includes up to $15,000,000 for High Priority grants and up to $29,000,000 for New Entrant Safety Audits grants. Funding is subject to reductions resulting from obligation limitations or rescissions as specified in SAFETEA–LU or other legislation.

MCSAP Basic and Incentive Funds

All 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands are eligible to receive MCSAP Basic funding grants directly from FMCSA. Basic funds are distributed by formula as outlined in 49 CFR 350.323. Incentive funds may be distributed to all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico based upon the safety and program performance factors found in 49 CFR 350.327. The Commonwealth of the Northern Mariana Islands, American

Samoa, Guam, and the U.S. Virgin Islands are ineligible for Incentive funding grants. The Federal share of Basic and Incentive funds is established at 80 percent for all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The Federal share of Basic funds is established at 100 percent for the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands. Funds remain available for expenditure in the State for the fiscal year in which they are allocated and for the next full fiscal year.

High Priority Grants

MCSAP High Priority funds are generally provided by FMCSA to support, enrich, or evaluate State CMV safety programs and to accomplish the following five objectives:

- Implement, promote, and maintain national programs to improve CMV safety;
- Increase compliance with CMV safety regulations;
- Increase public awareness concerning CMV safety;
- Provide education on CMV safety and related issues; and
- Demonstrate new safety-related technologies.

These funds will be allocated, at the discretion of FMCSA, to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. Section 4107 of SAFETEA–LU requires at least 90 percent of available funding be awarded to State or local government agencies. The Federal share of these funds is established at 80 percent except that the Federal share is established at 100 percent for public education activities.

New Entrant Grants

States and local governments are eligible to apply for and receive New Entrant funds to conduct New Entrant Safety Audits as required by 49 CFR part 385, subpart D. The safety audit consists of a review of both the new entrant's safety management systems as well as a sample of required records to assess its compliance with the Federal Motor Carrier Safety Regulations, applicable Hazardous Materials Regulations, and related recordkeeping requirements. These funds will be administered at the discretion of FMCSA. The Federal share of these funds is established at 100 percent.

Additional information on MCSAP and the application process is available from the Catalog of Federal Domestic Assistance (CFDA) website at www.cfda.gov. MCSAP is listed as CFDA number 20.218–National Motor Carrier Safety.

Application and Selection Process

Basic/Incentive Grants

The State lead agency, designated by the Governor, must submit an application (MCSAP–1) to the Division Administrator of the FMCSA Division Office in the State where the applicant is located no later than August 1 of each year. In addition to the application, the application package must include a Commercial Vehicle Safety Plan (CVSP) that covers all items listed in 49 CFR 350.213.

Upon receipt, the application will be reviewed by FMCSA. Funds will be allocated based upon FMCSA's approval of the application. For a State to receive funding, the CVSP must be complete and include all required documents. Applicants approved for funding will be required to enter into a grant agreement with FMCSA, which will be executed by a Division Administrator on behalf of the Agency.

High Priority Grants

High Priority funding is available to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. This funding will be administered at the discretion of FMCSA. The Federal share for these funds is established at 80 percent except for public education activities which are established at 100 percent Federal share.

States may use High Priority funds to comply with the requirements of section 4106 of SAFETEA–LU, which requires States to conduct comprehensive and highly visible traffic enforcement and commercial vehicle safety inspection programs in high risk locations and corridors. These projects may be similar in scope to the Ticketing Aggressive Cars and Trucks (TACT) pilot program that is currently underway in the State of Washington. TACT uses three principles—communications, enforcement, and evaluation—in an effort to decrease the unsafe driving practices of commercial and noncommercial drivers and to raise the awareness of the enforcement activity and the campaign message. Since the TACT project has not yet been fully evaluated, a State seeking to initiate a similar activity will need to develop its own high visibility traffic enforcement program and submit the program along with its High Priority application and funding proposal to FMCSA.

The applicant may submit an electronic application package through grants.gov. To apply using this method, the applicant must first register with grants.gov by going to *http://www.grants.gov/GetStartedRoles?type+aor.* Then, the applicant must download, complete, and submit the grant application package by going to *http://www.grants.gov/Apply?campaignid+tabnavtracking081105.*

As an alternative to the grants.gov process, the applicant may submit a MCSAP–1 paper application to the Division Administrator of the FMCSA Division Office in the State in which the applicant is located.

All applications must be received no later than April 28, 2006. In addition to the application, the application package must include a project proposal containing the following:

- Detailed budget,
- Scope of project,
- Purpose,
- Goals,
- Objectives,
- Implementation strategies,
- Performance measures, and
- Monitoring and evaluation plan.

Upon receipt, the applications will be reviewed by FMCSA and prioritized for potential funding. The review will consider consistency with national priorities, performance with respect to previous year grant programs, FMCSA personnel recommendations, and other criteria that FMCSA deems appropriate. Applicants approved for funding will be required to enter into a grant agreement with FMCSA. A Division Administrator will execute the grant agreement with the applicant on behalf of FMCSA.

If funds remain available after allocations are made for applications submitted by April 28, 2006, additional applications may be submitted and will be considered for funding until all available funds have been allocated.

New Entrant Grants

The applicant must submit an application package electronically through grants.gov or submit a MCSAP–1 paper application no later than April 28, 2006 to the Division Administrator of the FMCSA Division Office in the State in which the applicant is located.

In addition to the application, the application package must include a project proposal containing the following:

- Detailed budget,
- Scope of project,
- Purpose,
- Goals,

- Objectives,
- Implementation strategies,
- Performance measures, and
- Monitoring and evaluation plan.

Upon receipt, the applications will be reviewed by FMCSA and prioritized for potential funding. Applicants approved for funding will be required to enter into a grant agreement with FMCSA. A Division Administrator will execute the grant agreement with the applicant on behalf of FMCSA.

If funds remain available after allocations are made for applications submitted by April 28, 2006, additional applications may be submitted and will be considered for funding until all available funds have been allocated.

A copy of the MCSAP–1 grant application form is available and can be downloaded from *http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsapforms.htm.*

It is anticipated the grants.gov application process will be available for use by applicants applying for MCSAP New Entrant and High Priority grants by April 28, 2006.

Addresses of the FMCSA Division Offices are available on the Internet at *http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.asp.*

Issued on: March 20, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–4325 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Ms. Elyse Gerber to NHTSA's Office of Defects Investigation (ODI), received October 13, 2005, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to electrical system shut down on model year (MY) 2000 Mercedes Benz E430 vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP05–007.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Chan, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–8537.

SUPPLEMENTARY INFORMATION: By letter dated September 20, 2005, Ms. Gerber of Belleair Beach, FL, submitted a petition requesting that the agency investigate electrical system shut down on MY 2000 Mercedes Benz E430 vehicles. The petitioner alleges that coffee from a cup, placed in the cup holder, spilled onto the gear shifter and shut down the vehicle's entire electrical system. The petitioner indicated that the vehicle jerked and slowed down, but she was able to maneuver the vehicle off the highway and into a shopping center parking lot.

The concern raised by the petitioner was investigated by the Office of Defects Investigation (ODI) of NHTSA. The investigation (SQ01–010) was opened on September 25, 2001 on MY 2000 through 2001 Mercedes Benz SLK, C, CLK, and E Series vehicles. NHTSA opened the investigation after receiving three complaints concerning liquid spillage onto the transmission shifter (center console) area, which reportedly caused the vehicle to stall or shut down, and a related technical service bulletin (TSB) issued by Mercedes Benz. The TSB identifies improved ''Touch-Shifters'' (ESM-Electronic Selector Modules) that were more resistant to fluid contamination, which were installed on vehicles produced after March 2001.

Mercedes Benz's letter dated January 24, 2002, sent in response to a request for information by ODI, identified 164 consumer complaints and 241 non-duplicate warranty claims concerning liquid spillage onto the transmission shifter. The response showed that in many cases, depending on the severity of the spill, fluid spills onto the transmission shifter/center console of the subject vehicles will have no effect on drivability. Where a substantial amount of fluid is spilled, the fluid may penetrate the console and contaminate the ESM circuitry located under the console. In certain cases, this can result in a shifter malfunction. Owners reported that they have experienced that the shifter is stiff or difficult to operate, or that the shifter could not be shifted out of the ''Park'' position. In the event of a fluid spill while the vehicle is moving, the damaged ESM will activate the electronic transmission's ''limp-home'' mode. This mode will prevent the transmission from shifting past second gear while averting a stall or shut-down so that the vehicle can still be driven at a lower speed. Furthermore, Mercedes Benz's response indicated that there are no electronics related to the power brakes, power steering, or engine under the center console, and the company was unaware of any engineering basis for fluid spills in this area having any effect on those vehicle functions. No related crashes or injuries were identified during SQ01–010. Based on Mercedes' response and ODI's analysis of the facts, ODI closed its inquiry in February 2002. ODI concluded that the facts did not demonstrate a safety-related defect.

ODI has subsequently received nine more complaints alleging fluid contamination of the transmission shifter since the investigation was closed, none of which report crashes or injuries. These nine complainants mainly expressed dissatisfaction with the design of the cup holder and the cost of replacing the contaminated ESM. Similarly, in petitioner's case she was able to operate the vehicle to a place where it could be safety stopped after the liquid spillage. The petitioner has not provided any evidence of a safety-related defect.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: March 21, 2006.

Daniel Smith

Associate Administrator for Enforcement.

[FR Doc. E6–4309 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34843]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's lines

between milepost 2.1 (Grand Avenue), St. Louis, MO, and milepost 34.1, Pacific, MO, a distance of 32 miles.

The transaction was scheduled to be consummated on March 16, 2006, the effective date of the notice, and the temporary trackage rights will expire on or about July 31, 2006. The purpose of the temporary trackage rights is to facilitate the performance of maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34843, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 17, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2834 Filed 3–23–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13614K

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 13614K, Volunteer Return Preparation Program Hurricane Katrina Interview and Intake Sheet.

DATES: Written comments should be received on or before May 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Volunteer Return Preparation Program Hurricane Katrina Interview and Intake Sheet.

OMB Number: 1545–1999.

Form Number: 13614K.

Abstract: The completed form is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of Katrina impacted taxpayers having low to moderate incomes. The persons need assistance having their returns prepared so they can fully comply with the law. The form can also be used to assist the taxpayer after their appointment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, Federal Government and State, local or tribal government.

Estimated Number of Responses: 1,056,049.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 105,605.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 16, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4218 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 56–A

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 56–A, Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

DATES: Written comments should be received on or before May 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: Title: Form 56–A, Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

OMB Number: 1545–1683.

Form Number: 56–A.

Abstract: Form 56–A will be used by trustees of Illinois Land Trusts to report the creation of such trusts and any changes to the trust such as the adding or removing of a beneficiary or a change in the power of direction of the trust.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time Per Respondent: 2 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4219 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106736–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning an existing final regulation, REG–106736–00 (NPRM), Assumptions of Partner Liabilities.

DATES: Written comments should be received on or before May 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Assumptions of Partner Liabilities.

OMB Number: 1545–1843.

Regulation Project Number: REG–106736–00 (NPRM).

Abstract: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4220 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–21–91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning an existing temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

DATES: Written comments should be received on or before May 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91.

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 14, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4222 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8910

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 8910, Alternative Motor Vehicle Credit.

DATES: Written comments should be received on or before May 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Alternative Motor Vehicle Credit.

OMB Number: 1545–1998.

Form Number: 8910.

Abstract: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, farms, Federal Government and State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 9 hours, 59 minutes.

Estimated Total Annual Burden Hours: 98,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 16, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4223 Filed 3–23–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
March 24, 2006

Part II

Department of Education

34 CFR Parts 75, 76 and 108

Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 108

RIN 1870–AA12

Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part to title 34 of the Code of Federal Regulations and amends 34 CFR parts 75 and 76 to implement the provisions of the Boy Scouts of America Equal Access Act (Act). This Act directs the Secretary of Education, through the Office for Civil Rights (OCR), to ensure compliance with this new law. The regulations address equal access to public school facilities by the Boy Scouts of America and other designated youth groups.

DATES: These regulations are effective April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6125, Potomac Center Plaza, Washington, DC 20202–1100. Telephone: (202) 245–6767.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These regulations implement the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905. On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001 (NCLB), Pub. L. 107–110, amending the Elementary and Secondary Education Act of 1965 (ESEA). The Act is included in these amendments to the ESEA and is found in section 9525 of the ESEA. The Act applies to any public elementary school, public secondary school, local educational agency (LEA), or State educational agency (SEA) that has a designated open forum or limited public forum and that receives funds made available through the Department of Education (Department). Under the Act, these entities may not deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America (Boy Scouts) or any other youth group listed in title 36 of the United States Code (as a patriotic society) (Title 36 youth group) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum.

The Act authorizes the Secretary to implement this law by issuing and securing compliance with rules or orders with respect to the Act's requirements through OCR. The Act also directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. If a covered public elementary school, public secondary school, LEA, or SEA does not comply with the Act or regulations issued by the Department, it would be subject to the Department's enforcement actions.

On October 19, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for these regulations in the **Federal Register** (69 FR 61556). In the preamble to the NPRM, the Secretary discussed on pages 61557 through 61559 the significant regulations proposed to implement the Act. These included the following:

- Providing definitions for the following statutory terms: ''designated open forum,'' ''outside youth or community group,'' ''to sponsor any group officially affiliated with the Boy Scouts of America,'' and ''to sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society).''
- Explaining that neither State nor local law obviates or alleviates the obligation to comply with the Act and its implementing regulations.
- Providing that the obligation of public elementary schools, public secondary schools, LEAs, and SEAs to comply with the Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.
- Clarifying that equal access under the Act includes not only access to school facilities for meetings before, during, or after school, but also includes access to other activities related to an intention by any group officially affiliated with the Boy Scouts or any other Title 36 youth group to conduct a meeting within a covered entity's designated open forum or limited public forum. These other activities include, but are not necessarily limited to, means of communication and recruitment.
- Explaining that in order to be equal, the access provided to any group officially affiliated with the Boy Scouts or any other Title 36 youth group must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.
- Clarifying that public schools, LEAs, and SEAs can charge fees for this access, but only on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.
- Noting that the Act does not require any school, agency, or school served by an agency to which the Act applies to sponsor any group officially affiliated with the Boy Scouts or any other Title 36 youth group.
- Incorporating the procedural provisions applicable to title VI of the Civil Rights Act of 1964 (Title VI).
- Amending 34 CFR 75.500 and 76.500 to add the Act and the regulations in part 108 to the list of Federal statutes and regulations on nondiscrimination with which grantees, under 34 CFR 75.500, and States and subgrantees, under 34 CFR 75.600, that are covered entities must comply.

The significant differences between the NPRM and these final regulations are as follows:

- We have added definitions of ''group officially affiliated with any other Title 36 youth group,'' ''group officially affiliated with the Boy Scouts,'' ''premises or facilities,'' and ''Title 36 youth group'' to § 108.3.
- We have added language to § 108.5 that a covered entity may require that any group seeking equal access under the Act inform the covered entity whether the group is officially affiliated with the Boy Scouts or with any other Title 36 youth group. We have also added language that a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or its implementing regulations.
- We have restructured and modified § 108.6 so that the section more clearly explains the circumstances and terms under which access is required by the Act and its implementing regulations.
- We have added language to § 108.6 regarding nondiscrimination under the Act and its implementing regulations.
- We have deleted some language in proposed § 108.8, renumbered this section as § 108.9, and added a new § 108.8 addressing assurances of compliance.
- We have added language to § 108.9 to address the scope of fund termination.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, over 3,000 parties submitted comments on the

proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss major substantive issues under the sections of the regulations to which they pertain. Generally, we do not discuss comments that simply support the regulations, and we do not address technical and other minor changes—or suggested changes the law does not authorize the Secretary to make.

Section 108.3 Definitions

a. Designated Open Forum

Comments: One commenter expressed the concern that, under the definition, a public school would be required to allow the Boy Scouts, but not other youth or community groups, to meet on school premises during the school day if the school allowed a single outside youth or community group to meet on school premises or in school facilities during school hours, such as the Red Cross for a school blood drive. The commenter stated the definition would create a far greater right of access during the school day for the Boy Scouts and certain other groups, based on their viewpoint, than would be available to other youth or community groups.

Another commenter believed the definition would be a valuable tool in interpreting the Act because the definition made clear that if a school allows outside groups to use school facilities at any time, even during school hours, it may not prevent the Boy Scouts from using the facilities on the same terms.

One commenter stated the definition should include literature distribution by youth groups, such as the dissemination of recruitment materials, even if no meeting occurs with representatives of those groups, believing that this would be consistent with the requirement of proposed § 108.6(b) pertaining to equal access to means of communication.

Discussion: The definition of *designated open forum* is consistent with the Act's definition of limited public forum, which states that a limited public forum exists whenever the school involved grants an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school. The definition in § 108.3 of a designated open forum retains the statutory focus on access provided to one or more outside youth or community groups for meetings, and clarifies that, in the context of the Act, such a forum exists whenever the school involved designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the school day, for reasons other than to provide the school's educational program.

Under this definition, a school retains control over its educational program and does not create a designated open forum simply by inviting an outside group to the school to present information to the students. For instance, if a school, as part of its character education program, invites an outside group to speak to the student body on saying no to drugs, that does not mean that the school has created a designated open forum and must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to come to the school to conduct a presentation related to character education or to conduct meetings with students during school hours. Similarly, if the parent teacher association (PTA) of a particular school is an outside group not affiliated with the school, and the school, as part of its educational program, invites the PTA to speak to students about career opportunities, that does not mean that the school has created a designated open forum and must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to come to the school to conduct a presentation related to career opportunities or conduct meetings with students during school hours. In both of these examples, the schools have not created designated open forums, and therefore the Act does not apply.

The language pertaining to equal access, in section (b)(1) of the Act (section 9525(b)(1) of the ESEA, as amended by NCLB), makes clear that the protections of the Act are triggered by a request to hold a meeting within a covered entity's designated open forum or limited public forum by any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. Therefore, a designated open forum or limited public forum must be a forum in which groups can meet. A forum consisting solely of literature distribution does not satisfy this requirement and, thus, cannot be a designated open forum.

The proposed definition for designated open forum included the phrase ''the school's educational benefits or services,'' which is not as precise as the phrase ''the school's educational program.''

Changes: We have revised the language in the definition of designated open forum to incorporate the phrase ''the school's educational program.''

b. Group Officially Affiliated With Any Other Title 36 Youth Group; Group Officially Affiliated With the Boy Scouts

Comments: Two commenters stated that the regulations could be interpreted to mean that any groups officially affiliated with the Boy Scouts, including churches, synagogues, and nonprofit organizations, could use school facilities, and have access to other school-related means of communication and student information, for purposes that have nothing to do with the Boy Scouts or other Title 36 youth groups.

Discussion: The Act provides equal access to school premises or facilities for any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. The focus is equal access for the Boy Scouts or other Title 36 youth groups, rather than equal access, for any reason, for any organization or group that has any official affiliation with the Boy Scouts or with a Title 36 youth group. Thus, the Act does not provide equal access to an organization that sponsors a Boy Scout troop, but rather provides equal access to the Boy Scout troop sponsored by that organization. The Act covers the youth groups that are formed as a result of the community organization chartering process for the Boy Scouts or similar chartering or other process for other Title 36 youth groups.

Changes: We have provided definitions for *group officially affiliated with any other Title 36 youth group* in § 108.3(g) and *group officially affiliated with the Boy Scouts* in § 108.3(h).

c. Limited Public Forum

Comments: A commenter stated that the definition of *limited public forum* should include literature distribution by youth groups, such as the dissemination of recruitment materials, even if no meeting occurs with representatives of those groups, believing that this addition would be consistent with the requirement in proposed § 108.6(b) pertaining to equal access to means of communication.

Discussion: The statute defines when a limited public forum exists, and the definition in § 108.3 for limited public forum simply incorporates that statutory definition.

Changes: None.

d. Outside Youth or Community Group

Comments: One commenter argued that the definition of *outside youth or community group* creates a loophole, in that an LEA could claim that particular youth groups are affiliated with the LEA and are, thus, entitled to access, such as recruiting access, denied to the Boy

Scouts. The commenter proposed a new definition that focuses on whether the youth or community group provides extracurricular activities for students outside of school hours. Another commenter requested clarification that, under the definition, groups whose members are only students or faculty of a particular school, but lack formal affiliation with the school, would not be considered outside youth or community groups.

Discussion: The determination of whether a youth or community group is an outside youth or community group should not be made based solely on whether the group provides extracurricular activities for students outside of school hours. Using the provision of extracurricular activities for students as the standard to determine ''outside'' status might narrow the circumstances under which a limited public forum or designated open forum exists, since the standard proposed by the commenter would not include community groups serving adults that meet at a school, such as adult sports leagues. Since these adult community groups might not provide extracurricular activities for students, these groups might not be considered ''outside'' groups. Applying the commenter's suggested standard, a school could allow these adult community groups to meet at the school without creating a limited public forum or designated open forum. This result would not be consistent with the Act.

Furthermore, groups that consist only of students or faculty of a particular school might be considered ''outside'' groups, depending on the circumstances. For example, if a faculty member, on his or her own time, leads a Boy Scout troop whose membership is made up entirely of students from the faculty member's school, the Boy Scout troop could still be considered an outside group.

If a school or LEA chooses to affiliate itself with a youth or community group, the youth or community group is not considered an outside group, even if it is a Title 36 youth group. For instance, if a school chooses to sponsor a Boy Scout troop, the Boy Scout troop is not considered an outside group.

The determination of whether any particular group, such as a school's PTA, is an outside youth or community group must be made on a case-by-case basis, depending on the circumstances in each school or LEA and must be made in a manner that would not violate the nondiscrimination requirements of the Act, in section (b)(1), and the regulations in § 108.6(b)(5).

Changes: None.

e. Premises or Facilities

Comments: None.

Discussion: For clarification, we have provided a definition of the term *premises or facilities.* This definition makes clear that the term applies to more than just buildings and would, for instance, as applied to schools, cover school grounds.

Changes: We have provided a new definition of the term *premises or facilities* in § 108.3(l).

f. Title 36 of the United States Code (as a Patriotic Society); Title 36 Youth Group

Comments: Several commenters sought clarification regarding the other youth groups covered by the Act. Some commenters asked about the meaning of the phrase ''other patriotic youth groups.'' Other commenters asked about the process by which a group becomes recognized as a patriotic group and asked whether any group could receive this designation.

Discussion: The statute uses the phrase ''any group officially affiliated with the Boy Scouts, or any other youth group listed in title 36 of the United States Code (as a patriotic society).'' We read this phrase to mean any group officially affiliated with the Boy Scouts or any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society). The regulations define ''title 36 of the United States Code (as a patriotic society)'' to mean Subtitle II (Patriotic and National Organizations) of title 36 (Subtitle II). Congress charters the groups that are listed in Subtitle II.

Subtitle II does not indicate which of the listed organizations are youth groups. Thus, it is necessary to apply the Act's definition of *youth group*—''any group or organization intended to serve young people under the age of 21''—to determine which of the organizations listed under Subtitle II are youth groups covered by the Act. Relevant factors to analyze in making this determination include, but are not necessarily limited to, the purpose or purposes of the organization as defined in the applicable chapter of Title 36 of the United States Code, Subtitle II, Part B, and the functional purpose or purposes of the organization as defined by its mission statement or other principles of operation.

Given that Congress can change which groups are listed in Title 36 and given that the stated purposes of any group may change over time, it is not possible to identify and provide a comprehensive list of every Title 36 youth group. However, several examples of current Title 36 youth groups are the Big Brothers—Big Sisters of America (36 U.S.C. 30101), the Boys & Girls Clubs of America (36 U.S.C. 31101), the Girl Scouts of the U.S.A. (36 U.S.C. 80301), and Little League Baseball, Inc. (36 U.S.C. 130501).

Changes: We have added a definition of the term *Title 36 youth group* in § 108.3(p).

g. To Sponsor Any Group Officially Affiliated With the Boy Scouts or With Any Other Title 36 Youth Group

Comments: The Boy Scouts stated that the definitions of sponsorship are sufficient to implement the requirements of the Act and that no changes are necessary to these definitions.

Discussion: In the NPRM we specifically requested comment on these definitions. The Boy Scouts found the definition of sponsorship of any group officially affiliated with the Boy Scouts to be sufficient to implement the requirements of the Act, and no commenters proposed other definitions. Similarly, no commenters objected to, or proposed other definitions for, sponsorship of any group officially affiliated with any other Title 36 youth group.

Changes: None.

Section 108.4 Effect of State or Local Law

Comments: Conflict with State or local laws. Several commenters expressed concern that the Act creates a conflict with State or local anti-discrimination laws. The commenters believed that school officials at the local level should not be compelled to violate these State or local laws in order to provide the Boy Scouts with access to public schools. These commenters believed that, in jurisdictions with these anti-discrimination laws, school officials should have the autonomy to make decisions about the use of public school facilities without interference from the Federal Government.

Two of these commenters expressed concern that, because of this conflict between the Act and State or local laws, many schools, to the detriment of school children, would decide to ban all extracurricular groups, either to avoid litigation or to avoid violating the Act and risking the loss of Federal funds. One of these commenters questioned—(1) how school districts could structure their access plans and legally comply with the Act, Federal laws against religious discrimination, and State or local laws banning sexual orientation discrimination; (2) whether the Act

would protect a school system from being sued for discrimination under local or State law if a gay student seeking to join a Boy Scout troop at his school was refused entry; and (3) how school districts could avoid being sued by groups that exclude students of a particular race, religion, etc., but seek access to the public schools, since the Boy Scouts and other title 36 patriotic groups are allowed (in the commenter's opinion) to avoid compliance with civil rights laws mandating equal access by individuals to publicly supported groups. The other commenter expressed concern that compelling schools to violate anti-discrimination laws in order to give the Boy Scouts access to school facilities does not set a good example for American schoolchildren.

One commenter, in reference to the Boy Scouts' ineligibility to participate in a State's charitable campaign due to the Boy Scouts' inability to sign off on the campaign's nondiscrimination policy, questioned whether there would be coordination between Federal and State statutes on this issue.

One commenter stated that school buildings are maintained primarily by local, city, and State taxes, and thus local communities should not be forced to give unequal and preferential treatment to discriminatory organizations like the Boy Scouts. Another commenter expressed concern that the Act's requirements add to an already overwhelming bureaucracy, explaining that an equal access requirement that public schools treat all groups equally already exists in the commenter's State.

Discussion: Section 108.4 reflects the statutory mandate in section (c)(2) of the Act that covered entities must comply with the equal access and nondiscrimination requirements notwithstanding any other provision of law. This includes State or local law. Therefore, covered entities must comply with the Act even if State or local law conflicts with the Act.

The Act exercises a proper Federal role by ensuring that public schools receiving funds made available through the Department do not exclude the Boy Scouts for exercising their freedom of association to set their own leadership criteria, as found by the Supreme Court in *Boy Scouts of America* v. *Dale*, 530 U.S. 640, 120 S. Ct. 2446 (2000). Congress passed the Act to address the situation that the Boy Scouts, because of their membership or leadership criteria, had been barred from access to some public schools while other youth or community groups were granted access.

It is beyond the scope of the authority of the Department to determine whether the Act would protect public school districts from being sued for discrimination under State or local law, or how public school districts could protect themselves from lawsuits from groups not covered by the Act. School districts should consult their attorneys if these situations arise.

Changes: None.

Comments: Laws protecting rights of gay student groups. More than half of the commenters stated that gay-straight alliances and other support groups for gay, lesbian, bisexual, and transgender students and students questioning their sexual orientation have a legal right to meet in public schools. Most of these commenters noted that gay students suffer harassment and discrimination at school and asked that the final regulations include gay student groups.

Discussion: The Department does not condone harassment of students on any basis in the public schools. However, the Act specifically covers any group officially affiliated with the Boy Scouts or with any other Title 36 youth group. It would exceed the scope of the statutory language if the regulations implementing the statute afforded coverage to groups not identified in the statute.

Of course, the Act does not prohibit schools, LEAs, and SEAs from providing equal access to all groups, including those not covered by the Act. The Act simply requires that these schools and agencies provide equal access to any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

Changes: None.

Comments: Interaction with school rules. One commenter questioned whether student members of the Boy Scouts would be exempt from bullying and nondiscrimination rules within the school.

Discussion: Neither the Act nor the implementing regulations affect the obligation of student members of the Boy Scouts to comply with a public school's code of student conduct. Further, neither the Act nor the implementing regulations affect the obligation of members of the Boy Scouts to comply with a public school's rules pertaining to the conduct of members of groups using school premises or facilities. For example, if a school's rules of conduct prohibit group members from possessing weapons, such as knives, on or in school premises or facilities, the school would not be required by the Act to permit members of a Boy Scout troop to bring knives to troop meetings held on or in school premises or facilities. Thus, student members of the Boy Scouts must comply with a public school's code of student conduct in the same manner as all other students subject to those policies, and members of groups using school premises or facilities must comply with a public school's rules pertaining to the conduct of members of groups using school premises or facilities in the same manner as all others subject to the school's policies. Of course, compliance with these student conduct codes or other rules of conduct would not be required if they conflict with the Act.

Changes: None.

Section 108.5 Compliance Obligations

Comments: Three commenters expressed concerns about holding local school districts responsible for complying with the Act in situations in which school districts have no authority over decisions concerning public use of school facilities. One of these commenters explained that the authority of local school districts over the use of facilities varies among States, and among local communities, spanning the spectrum from local school boards that have sole authority to local school boards that have no authority. This commenter believed the regulations could result in costly litigation for LEAs, in addition to the potential loss of Federal funds, because the regulations create an unworkable situation for public schools that have no authority over the public use of school facilities. This commenter recommended that the regulations be revised to specify that if local school districts do not have authority over the public use of school facilities, the responsibility for complying with the Act shifts to the responsible agency, with the responsible agency assuming any liability associated with the failure to comply with the Act.

The second commenter recommended that, if the intent of the regulations is to prevent schools from transferring the authority to determine use of school facilities to an outside entity not regulated by the Act, then the regulations should include language preventing schools from doing so. This commenter also believed these regulations raised questions about the confusion that would occur if an outside organization had the authority to grant access to school premises or facilities while the school itself had the authority to grant access to student information or means of communication.

The third commenter recommended that the regulations be revised to state that the obligation of public schools to comply with the Act is limited by the nature or extent of their authority to

make decisions about use of school facilities.

Discussion: The Secretary recognizes that public schools, LEAs, or SEAs may not always have the independent authority to make decisions concerning the use of school premises or facilities, and that other entities may be responsible for making those decisions. The statute, however, holds public schools, LEAs, and SEAs responsible for compliance with the Act and does not condition their compliance obligation on whether they have the authority to make decisions about the use of their school premises or facilities. Section 108.5(a) clarifies that the statute applies to covered public elementary schools, public secondary schools, LEAs, and SEAs regardless of their authority to make decisions about the use of school premises or facilities.

We recognize that the Act imposes new obligations on covered entities. To satisfy these obligations, covered entities must know if a group seeking access is a group that is officially affiliated with the Boy Scouts or with any other Title 36 youth group. While it might not be difficult to ascertain that a particular Boy Scout troop seeking access is a group that is officially affiliated with the Boy Scouts, it might be more difficult to ascertain that another group seeking access is officially affiliated with a Title 36 youth group.

Accordingly, covered entities may require that any group seeking equal access inform the covered entity whether the group is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity would take this action at the time of the group's request for access. Of course, there would be no need for a covered entity to take this action if that covered entity already knew that a group seeking equal access is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. Additionally, a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or the regulations.

Changes: We have revised § 108.5 by adding language that a covered entity may require that any group seeking equal access under the Act inform the covered entity whether the group is officially affiliated with the Boy Scouts or with any other Title 36 youth group and by adding language that a covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or the regulations.

Section 108.6 Equal Access

Comments: Conflict with Title VI. One commenter stated that the regulations should be modified to clarify that the regulations do not limit, in any way, the applicability of section 601 of Title VI, which prohibits discrimination on the basis of race, color, or national origin. The commenter believed that, because the leadership or membership criteria of a group covered by the Act could be discriminatory on the basis of race, color, or national origin, and because the regulations do not explicitly contain such a limitation, it appears the regulations are attempting to trump Title VI.

Discussion: Section 601 of Title VI has not been amended or superseded in any way by the Act or these regulations.

Changes: None.

Comments: Circumstances under which access is required. A few commenters questioned when groups covered by the Act must be permitted to have access, asking under what circumstances a covered entity could deny access to these groups. Two commenters questioned what types of groups a school district could permit to have access to its facilities without also having to permit the Boy Scouts to have the same access.

Discussion: Section 108.6(a) restates the statutory requirement that no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts or with any other Title 36 youth group that requests to conduct a meeting within the covered entity's designated open forum or limited public forum. Thus, if a covered entity has a designated open forum or limited public forum, then it must allow any group officially affiliated with the Boy Scouts or with any other Title 36 youth group to meet in that designated open forum or limited public forum. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Of course, if a school district does not have a designated open forum or limited public forum, the Act would not apply.

We recognize that the proposed regulations might not have made clear that in order to obtain access under the Act, a group must first request to conduct a meeting in the covered entity's designated open forum or limited public forum. If that group does not request to meet in the covered entity's forum, then that group is not entitled under the Act to access to any other benefits and services, such as a school's bulletin board.

Changes: We have restructured § 108.6 so that the section more clearly explains the circumstances under which access is required under the Act.

Section 108.6(b)(2) Equal Access: Benefits and Services

Comments: Benefits and services covered. Some commenters questioned what activities are covered by the Act. One commenter requested that the term ''school activities'' be stricken from the regulations because the commenter found the term confusing and not defined.

Discussion: The range of benefits and services covered by the Act is determined by what a covered entity provides to one or more outside youth or community groups that have access to meet in the covered entity's designated open forum or limited public forum. Whatever those benefits and services are, the covered entity must provide access to all of those benefits and services to any group officially affiliated with the Boy Scouts or with any other Title 36 youth group that requests to conduct a meeting in that same forum. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms,* this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Thus, if another outside youth or community group that is allowed to meet in the covered entity's designated open forum is permitted to send home with students informational materials, then the covered entity must allow groups officially affiliated with the Boy Scouts or with any other Title 36 youth group that request to meet in that same designated open forum to send home informational materials. If, however, the covered entity does not permit any outside youth or community groups that are allowed to meet in the covered entity's designated open forum to send home informational literature, then the covered entity does not have to permit groups officially affiliated with the Boy Scouts or with any other Title 36 youth group that request to meet in that designated open forum to send home informational literature.

The NPRM preamble used the term ''school activities'' in reference to § 108.6, and the proposed regulations used the term ''activities.'' We agree that we need to avoid confusion.

Changes: We have added language to clarify the circumstances under which equal access to benefits and services is required, and we have replaced the term

''activities'' with the term ''benefits and services.''

Comments: Classroom instruction and school assemblies. A few commenters questioned whether the Act covers classroom instruction. One of these commenters was opposed to allowing the Boy Scouts the opportunity to meet during classroom instructional time. Another commenter stated that the regulations should specify the Boy Scouts' right to go into classrooms and participate in school assemblies so that they can speak to students about scouting.

Discussion: The Act does not require access, but rather equal access. Thus, if one or more outside youth or community groups that are allowed to meet in a covered entity's designated open forum or limited public forum are given access to a benefit or service, then any group covered by the Act that requests to meet in that same forum must be given access to that benefit or service. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms,* this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. However, if a covered entity decides to deny access to a particular benefit or service to all outside youth or community groups that have access to meet in that designated open forum or limited public forum, that decision would not violate the Act. For instance, if a school decides that no outside youth or community groups that have access to meet in the covered entity's designated open forum or limited public forum may hold recruitment assemblies during school hours so that school hours can be devoted to instruction, the Act does not require that school to make an exception for any group covered by the Act.

Changes: None.

Comments: Literature distribution and other means of communication. One commenter stated that the regulations should specify the Boy Scouts' right to distribute informational flyers about scouting. Another commenter objected to the fact that the regulations failed to define access as including the right of the Boy Scouts and similar organizations to distribute literature, including recruitment material, to students at schools.

Another commenter believed a school district could lawfully limit access to a forum based on subject matter or speaker identity and questioned whether, under the regulations, a school district could lawfully exclude the Boy Scouts from a school district's literature distribution forum if they were not among the class of speakers to which the literature distribution forum was (in the commenter's opinion) lawfully limited. This commenter further questioned whether, if a school district could not lawfully exclude the Boy Scouts from such a forum, the school district would then be required to permit access to other community groups speaking on the same subject matter as the Boy Scouts even if those other groups were not among the class of speakers to which the literature distribution forum was (in the commenter's opinion) lawfully limited.

Another commenter stated that the final regulations should clarify that access to means of communication is limited to communicating information about the meetings themselves.

Discussion: If a school decides that no outside youth or community groups that are allowed to meet in the school's designated open forum or limited public forum may distribute literature, such as informational packets and recruitment materials, the Act does not require that the school make an exception for any group covered by the Act. If, however, a school permits one or more outside youth or community groups that are allowed to meet in the school's designated open forum or limited public forum to distribute literature, such as informational packets and recruitment materials, then the school must provide groups covered by the Act that request to hold meetings in the same forum with the opportunity to distribute literature, such as informational packets and recruitment materials. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Whether the covered entity must permit groups not covered by the Act to have access in order to distribute literature is beyond the scope of the Act and these regulations.

Any group officially affiliated with the Boy Scouts or with any other Title 36 youth group must request to meet in the school's limited public forum or designated open forum in order to have access to means of communication. However, this access to means of communication is not necessarily limited to communicating information about the meetings themselves. It depends on what the covered entity provides to one or more outside youth or community groups that are allowed to meet in that same forum. If the covered entity allows only notices about meetings to be sent home with students, then groups officially affiliated with the Boy Scouts or with any other Title 36 youth group can only send home with students notices about the meetings. However, if the covered entity allows one or more outside youth or community groups that are allowed to meet in the same forum to send home other types of literature, such as informational packets and recruitment materials, then the school must allow groups officially affiliated with the Boy Scouts or with any other Title 36 youth group to send home these other types of literature.

Changes: None.

Comments: Recruitment issues related to access to student information. One commenter recommended that the access required by the regulations incorporate the provisions from NCLB pertaining to access for armed forces recruitment and for recruitment purposes by institutions of higher education.

Discussion: Access for recruitment under the Act is not the same as NCLB's access for armed services recruitment and recruitment by institutions of higher education, provided under section 9528 of the ESEA, as amended by NCLB.

Changes: None.

Comments: Fundraising. Another commenter believed the regulations overlooked fundraising, stating that it was not clear from the regulations whether the Boy Scouts would be allowed to fundraise on school premises on terms no less favorable than the most favorable terms afforded to other community groups, such as the Girl Scouts. The commenter believed that, if the Girl Scouts are permitted to fundraise by posting fliers about cookie sales and by conducting sales on campus, then the Boy Scouts should be accorded the same rights.

Discussion: Although fundraising is not listed as a specific benefit or service, if a covered entity allows one or more outside youth or community groups to meet in the covered entity's designated open forum or limited public forum to engage in fundraising, such as by posting notices on school bulletin boards and selling items on campus, then the school must provide groups covered by the Act that request to hold meetings in the same forum with an equal opportunity to engage in fundraising, such as by posting notices on school bulletin boards and selling items on campus. As further discussed under the heading *§ 108.6(b)(4) Equal Access: Terms*, this access must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Changes: None.

Section 108.6(b)(3) Equal Access: Fees

Comments: One commenter expressed concern about the costs public schools incur due to property damage and theft that results if they are forced to allow groups to use their buildings. The commenter questioned whether schools could require these groups to pay a rental fee. Another commenter believed groups covered by the Act should not only have equal access to schools, but should be able to use the facilities free of charge. Another commenter was concerned that many Boy Scout troops cannot afford to pay the fees charged to access public school facilities and thus are denied access to the facilities because of their inability to pay these fees.

Discussion: Whether any group covered by the Act can be charged fees in connection with access, including, but not necessarily limited to, conducting meetings on or in school premises or facilities, using school-related means of communication, or conducting recruitment activities, depends on whether fees are charged to other outside youth or community groups that are allowed to meet in the same designated open forum or limited public forum. If a covered entity charges fees to other outside youth or community groups, then it may charge fees to any group covered by the Act. However, as more fully explained under the heading *§ 108.6(b)(4) Equal Access: Terms*, these fees must be charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Changes: None.

Section 108.6(b)(4) Equal Access: Terms

Comments: None.

Discussion: Any determinations of which youth or community groups are outside youth or community groups must be made on a case-by-case basis, depending on the circumstances in each school or LEA and must be made in a manner that would not violate the nondiscrimination requirements of the Act, in section (b)(1), and the regulations, in § 108.6(b)(5).

Proposed § 108.6 repeated the equal access standard four times. This repetitive format is somewhat cumbersome. We have decided to state the standard for equal access one time and to clarify that this standard applies to any access provided under these regulations and to any fees charged for this access. Thus, the standard applies to all forms of access, including, but not necessarily limited to, meetings (§ 108.6(b)(1)), benefits and services (§ 108.6(b)(2)), and any fees charged for this access (§ 108.6(b)(3)).

Changes: We have added a new paragraph § 108.6(b)(4), regarding the terms under which access must be provided under the Act and these regulations.

Section 108.6(b)(5) Equal Access: Nondiscrimination

Comments: None.

Discussion: The proposed regulations may not have made clear that, consistent with the requirements in section (b)(1) of the Act, decisions relevant to the provision of equal access must be made on a nondiscriminatory basis. Any determinations of which youth or community groups are outside groups must be made using objective, nondiscriminatory criteria, and these criteria must be used in a consistent, equal, and nondiscriminatory manner.

Change: We have added a new paragraph § 108.6(b)(5), regarding nondiscrimination under the Act and these regulations.

Section 108.7 Voluntary Sponsorship

Comments: Two commenters noted the distinction between a public school sponsoring a Boy Scout troop and a public school providing equal access to a privately sponsored Boy Scout troop. Two commenters suggested that public schools cannot lawfully sponsor Boy Scout troops, given the Boy Scouts' leadership and membership policies.

Discussion: The Act does not address the legality of school sponsorship of Boy Scout troops. The Act simply provides that nothing in the law should be construed to require any school, agency, or school served by an agency to sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

Changes: None.

Section 108.8 Assurances

Comments: None.

Discussion: The Act directs the Secretary, through OCR, to enforce the law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. That enforcement process includes obtaining assurances from applicants for Federal financial assistance that they will comply with Title VI. This requirement is in the Title VI regulations in 34 CFR 100.4. In the proposed regulations in § 108.8, we proposed to incorporate by reference this Title VI assurances provision.

We recognize that proposed § 108.8 might not have made clear that covered entities have an obligation to provide assurances of compliance with the Act. We also recognize that some requirements of the Title VI assurances provision in 34 CFR 100.4 are not applicable to the Act. A separate regulatory section on assurances would more effectively put schools, LEAs, and SEAs on notice of their obligation to provide these assurances of compliance.

Changes: We renumbered proposed § 108.8 as § 108.9 and added a new § 108.8 that specifically addresses assurances of compliance with the Act. We also revised renumbered § 108.9 by removing the reference to 34 CFR 100.4, which is the Title VI assurances provision.

Section 108.9 Procedures

Comments: One commenter suggested that the regulations contain an informal complaint process that would not require immediate recourse to the courts. This commenter also suggested that the burden of showing compliance should be on the school, rather than placing the burden of showing noncompliance on the individual Cubmaster or den leader, given the mismatch in resources between a school (or school district) and an individual Scouter (or Pack). Another commenter suggested that the regulations provide that local school districts have the option to provide their own administrative process for review and appeal of access decisions and that this process must be exhausted prior to filing complaints with OCR. This same commenter suggested that the regulations clarify that the law does not provide a private cause of action. Another commenter asked, if an atheist student is barred from access to a school's Boy Scout troop and sues under Federal law, how would OCR simultaneously defend this student's legal rights and those of the Boy Scout troop and/or the school?

Discussion: The Act directs the Secretary, through OCR, to enforce the law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964. That enforcement process, which in its entirety includes fund termination, is described in the procedural provisions applicable to Title VI in 34 CFR parts 100 and 101. We indicated in proposed § 108.8 that these procedural provisions in part 100 and part 101 also would apply to compliance under the Act.

Under the Title VI enforcement process, any person may file a complaint with OCR alleging a violation of the relevant law. In an OCR complaint investigation OCR does not represent either the individual who

filed the complaint or the entity against which the complaint was filed.

We decline to create another informal complaint process and do not think it appropriate to restrict OCR's enforcement of the Act by requiring exhaustion of a process at the school district level before OCR accepts complaints alleging violations of the Act. Furthermore, it is beyond the Secretary's authority to determine whether or not there is a private cause of action under the Act.

We recognize that the proposed regulations did not clearly address the scope of fund termination. One of the Title VI regulatory procedural provisions referenced in proposed § 108.8 was 34 CFR 100.8(c), which addresses termination of or refusal to grant or to continue Federal financial assistance. Among other things, § 100.8(c) limits the termination or refusal to grant or continue Federal financial assistance ''to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.'' This limitation, however, is inconsistent with language in the Act which states that, notwithstanding any other provision of law, no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act. The language in 34 CFR 100.8(c) regarding limitations on the termination of Federal financial assistance does not apply to enforcement of the Act.

As discussed previously, we also recognize that the language in proposed § 108.8 referencing the Title VI assurances provision in 34 CFR 100.4 might not have made clear that covered entities have an obligation to provide assurances of compliance with the Act, and we recognize that some requirements of the Title VI assurances provision in 34 CFR 100.4 are not applicable to the Act.

Changes: We have renumbered proposed § 108.8 as § 108.9. We have added language to § 108.9 to clarify that, notwithstanding any other provision of law, including § 100.8(c), no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act or this part. We have also added a new § 108.8 that specifically addresses assurances of compliance with the Act, and we have revised § 108.9 by removing the reference to 34 CFR 100.4.

Executive Order 12250

Pursuant to Executive Order 12250, which provides for the coordination of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, the Assistant Attorney General for Civil Rights has reviewed and approved these final regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. We have determined this to be a ''significant'' regulatory action within the meaning of Executive Order 12866 and thus the Office of Management and Budget (OMB) has reviewed these final regulations. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. The final regulations do not impose any specified costs. If recipients have to change their practices in order to meet the equal access and nondiscrimination requirements of the statute, they may incur some costs. Any costs, including costs to comply with information collection requirements, likely would be minimal. The potential benefits of these final regulations are that stakeholders have easily accessible, codified, published regulations that clarify both the substantive obligations of the law and how the Department will enforce the law. By engaging in rulemaking, we were able to obtain input from stakeholders and other interested parties that helped us develop clear and accessible regulations. By developing final regulations for use in enforcing the Act, we complied with the directive in the Act to enforce the law in a manner consistent with the procedures used to enforce Title VI. The final regulations incorporate existing procedural sections of the Title VI regulations, and clarify the substantive obligations of covered entities.

Executive Order 13132

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We reviewed and considered comments that addressed federalism issues.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations (§ 108.8).

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

34 CFR Part 108

Boy Scouts of America, Education, Equal access, Reporting and recordkeeping requirements.

Dated: March 21, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 75 and 76 of, and adds a new part 108 to, title 34 of the Code of Federal Regulations to read as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 75.500 is amended by:

■ A. Designating the existing text as paragraph (a).

■ B. In the chart in newly designated paragraph (a), removing ''45 CFR part 90.'' and inserting, in its place, ''34 CFR part 110.''

■ C. Adding a new paragraph (b) to read as follows:

§ 75.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A grantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

PART 76—STATE-ADMINISTERED PROGRAMS

■ 3. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

■ 4. Section 76.500 is amended by:

■ A. Designating the existing text as paragraph (a).

■ B. In the chart in newly designated paragraph (a), removing ''45 CFR part 90.'' and inserting, in its place, ''34 CFR part 110.''

■ C. Adding a new paragraph (b) to read as follows:

§ 76.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A State or subgrantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

■ 5. Add part 108 to read as follows:

PART 108—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS

Sec.
108.1 Purpose.
108.2 Applicability.
108.3 Definitions.
108.4 Effect of State or local law.
108.5 Compliance obligations.
108.6 Equal access.
108.7 Voluntary sponsorship.
108.8 Assurances.
108.9 Procedures.

Authority: 20 U.S.C. 7905, unless otherwise noted.

§ 108.1 Purpose.

The purpose of this part is to implement the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905.

(Authority: 20 U.S.C. 7905)

§ 108.2 Applicability.

This part applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(Authority: 20 U.S.C. 7905)

§ 108.3 Definitions.

The following definitions apply to this part:

(a) *Act* means the Boy Scouts of America Equal Access Act, section 9525 of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107–110, 115 Stat. 1425, 1981–82 (20 U.S.C. 7905).

(b) *Boy Scouts* means the organization named ''Boy Scouts of America,'' which has a Federal charter and which is listed as an organization in title 36 of the United States Code (Patriotic and National Observances, Ceremonies, and Organizations) in Subtitle II (Patriotic and National Organizations), Part B (Organizations), Chapter 309 (Boy Scouts of America).

(c) *Covered entity* means any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(d) *Department* means the Department of Education.

(e) *Designated open forum* means that an elementary school or secondary school designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational program.

(f) *Elementary school* means an elementary school as defined by section 9101(18) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107–110, 115 Stat. 1425, 1958 (20 U.S.C. 7801).

(g) *Group officially affiliated with any other Title 36 youth group* means a youth group resulting from the chartering process or other process used by that Title 36 youth group to establish official affiliation with youth groups.

(h) *Group officially affiliated with the Boy Scouts* means a youth group formed as a result of a community organization charter issued by the Boy Scouts.

(i) *Limited public forum* means that an elementary school or secondary school grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

(j) *Local educational agency* means a local educational agency as defined by section 9101(26) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107–110, 115 Stat. 1425, 1961 (20 U.S.C. 7801).

(k) *Outside youth or community group* means a youth or community group that is not affiliated with the school.

(l) *Premises or facilities* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in that property.

(m) *Secondary school* means a secondary school as defined by section 9101(38) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

(n) *State educational agency* means a State educational agency as defined by section 9101(41) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Pub. L. 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

(o) *Title 36 of the United States Code (as a patriotic society)* means title 36 (Patriotic and National Observances, Ceremonies, and Organizations), Subtitle II (Patriotic and National

Organizations) of the United States Code.

(p) *Title 36 youth group* means a group or organization listed in title 36 of the United States Code (as a patriotic society) that is intended to serve young people under the age of 21.

(q) *To sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group* means to obtain a community organization charter issued by the Boy Scouts or to take actions required by any other Title 36 youth group to become a sponsor of that group.

(r) *Youth group* means any group or organization intended to serve young people under the age of 21.

(Authority: 20 U.S.C. 7905)

§ 108.4 Effect of State or local law.

The obligation of a covered entity to comply with the Act and this part is not obviated or alleviated by any State or local law or other requirement.

(Authority: 20 U.S.C. 7905)

§ 108.5 Compliance obligations.

(a) The obligation of covered entities to comply with the Act and this part is not limited by the nature or extent of their authority to make decisions about the use of school premises or facilities.

(b) Consistent with the requirements of § 108.6, a covered entity must provide equal access to any group that is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity may require that any group seeking equal access inform the covered entity whether the group is officially affiliated with the Boy Scouts or is officially affiliated with any other Title 36 youth group. A covered entity's failure to request this information is not a defense to a covered entity's noncompliance with the Act or this part.

(Authority: 20 U.S.C. 7905)

§ 108.6 Equal access.

(a) *General.* Consistent with the requirements of paragraph (b) of this section, no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting within that covered entity's designated open forum or limited public forum. No covered entity shall deny that access or opportunity or discriminate for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts or of the Title 36 youth group.

(b) *Specific requirements.* (1) *Meetings.* Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting in the covered entity's designated open forum or limited public forum must be given equal access to school premises or facilities to conduct meetings.

(2) *Benefits and services.* Any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group that requests to conduct a meeting as described in paragraph (b)(1) of this section must be given equal access to any other benefits and services provided to one or more outside youth or community groups that are allowed to meet in that same forum. These benefits and services may include, but are not necessarily limited to, school-related means of communication, such as bulletin board notices and literature distribution, and recruitment.

(3) *Fees.* Fees may be charged in connection with the access provided under the Act and this part.

(4) *Terms.* Any access provided under the Act and this part to any group officially affiliated with the Boy Scouts or officially affiliated with any other Title 36 youth group, as well as any fees charged for this access, must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(5) *Nondiscrimination.* Any decisions relevant to the provision of equal access must be made on a nondiscriminatory basis. Any determinations of which youth or community groups are outside groups must be made using objective, nondiscriminatory criteria, and these criteria must be used in a consistent, equal, and nondiscriminatory manner.

(Authority: 20 U.S.C. 7905)

§ 108.7 Voluntary sponsorship.

Nothing in the Act or this part shall be construed to require any school, agency, or school served by an agency to sponsor any group officially affiliated with the Boy Scouts or with any other Title 36 youth group.

(Authority: 20 U.S.C. 7905)

§ 108.8 Assurances.

An applicant for funds made available through the Department to which this part applies must submit an assurance that the applicant will comply with the Act and this part. The assurance shall be in effect for the period during which funds made available through the Department are extended. The Department specifies the form of the assurance, including the extent to which assurances will be required concerning the compliance obligations of subgrantees, contractors and subcontractors, and other participants, and provisions that give the United States a right to seek its judicial enforcement. An applicant may incorporate this assurance by reference in subsequent applications to the Department.

(Approved by the Office of Management and Budget under control number 1870–0503.)

(Authority: 20 U.S.C. 7905)

§ 108.9 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964, which are found in 34 CFR 100.6 through 100.11 and 34 CFR part 101, apply to this part, except that, notwithstanding these provisions and any other provision of law, no funds made available through the Department shall be provided to any school, agency, or school served by an agency that fails to comply with the Act or this part.

(Authority: 20 U.S.C. 7905)

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Friday, March 24, 2006

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FEDERAL REGISTER PAGES AND DATE, MARCH

10411–10604 1
10605–10830 2
10831–11134 3
11135–11286 6
11287–11504 7
11505–12118 8
12119–12276 9
12277–12612 10
12613–12990 13
12991–13242 14
13243–13524 15
13525–13736 16
13737–13922 17
13923–14088 20
14089–14354 21
14355–14628 22
14629–14794 23
14795–15004 24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7982 10411
7983 10413
7984 10793
7985 10823
7986 10825
7987 (See EO 11651) 10827
7988 13243
7989 14355

Executive Orders:
EO 11651 (See Proclamation 7987) 10827
12957 (See Notice of March 13, 2006) 13241
12959 (See Notice of March 13, 2006) 13241
13059 (See Notice of March 13, 2006) 13241
13397 12276

Administrative Orders:
Notices:
Notice of February 27, 2006 (See: EO 13288, 3/6/2003; EO 13391, 11/22/2005) 10603
Notice of March 13, 2006 13241
Presidential Determinations:
No. 2005-19 of January 27, 2005 (Amended by Presidential Determination No. 2006-10 of February 7, 2006) 11137
No. 2006-09 of February 7, 2006 11135
No. 2006-10 of February 7, 2006 11137
No. 2006-11 of February 28, 2006 12119

5 CFR

730 13525
890 11287

Proposed Rules:
534 10913
890 12438

7 CFR

56 12613
57 12613
301 .....11288, 12991, 12992, 13525, 13923, 14795
319 .....10605, 11288
718 13737
915 11294
932 12614
1207 11294
1415 11139
1437 13737
1439 10831
2902 13686

Proposed Rules:
Ch. I 14827
Ch. IX 14827
Ch. X 14827
Ch. XI 14827
210 10914
220 10914
225 10914
226 10914
246 10914
247 10914
251 10914
319 10924
457 .....14119, 14828
3550 11167

9 CFR

77 13926
93 12994
95 12994
312 12277
352 12998

Proposed Rules:
2 12302
390 11326

10 CFR

72 14120

Proposed Rules:
1 12782
2 12782
10 12782
19 12782
20 12782
21 12782
25 12782
26 .....12782, 13782
50 11169
51 12782
52 12782
54 12782
55 12782
72 .....12782, 14120
73 12782
75 12782
95 12782
140 12782
170 12782
171 12782
431 12634

11 CFR

100 14357
300 13926

Proposed Rules:
100 13557
109 13306

12 CFR

202 11296
211 13934
227 11297
330 14629
404 14360
745 14631

Proposed Rules:

41 14419
222 14419
334 14419
571 14419
611 13040
619 13040
620 13040
621 13040
624 13040
627 13040
630 13040
717 14419
900 13306
917 13306
925 13306
930 13306
931 13306
934 13306

14 CFR

23 13245
39 ..... 10415, 10605, 10832, 11151, 11153, 11156, 11462, 12121, 12122, 12124, 12125, 12129, 12131, 12277, 12616, 12998, 13526, 13529, 13533, 13538, 13747, 14092, 14363, 14365, 14367, 14370, 14636, 14638
65 10607
71 ..... 10417, 10418, 10834, 11297, 11298, 11709, 13247, 14094, 14097, 14797
95 13749
97 ..... 11300, 11302, 13753, 13755

Proposed Rules:

25 14122
39 ..... 10453, 11328, 11333, 11335, 11341, 11343, 11345, 11349, 11546, 11549, 11551, 11555, 12150, 12152, 12305, 13050, 13053, 13055, 13058, 13060, 13558, 13787, 14123, 14126, 14425
71 ..... 10924, 12647, 13789, 14829, 14830
91 14122
121 14122
125 14122
129 14122

15 CFR

740 14097
744 14097
766 14097
770 14097
904 12440

Proposed Rules:

806 10454

16 CFR

312 13247
1633 13472

Proposed Rules:

660 14419
661 14419

17 CFR

Proposed Rules:

270 11351

18 CFR

35 ..... 11304, 13000
39 11505
381 13756
385 14640

Proposed Rules:

40 11557

19 CFR

10 11304
12 13757

20 CFR

404 10419
416 10419

Proposed Rules:

404 10456
416 10456
418 10926
422 12648

21 CFR

172 12618
510 13541
520 ..... 13000, 13541, 14642
522 13541
524 13541
529 13541
530 14374
866 ..... 10433, 14377
1271 14798
1308 10835

Proposed Rules:

866 12653

22 CFR

96 12132
104 12132

24 CFR

972 14328

Proposed Rules:

200 13222
401 13222
1000 11464

25 CFR

162 12280

26 CFR

1 ..... 11306, 12280, 13001, 13003, 13008, 13766, 13767, 14099, 14798
301 13003
602 ..... 13008, 14129

Proposed Rules:

1 ..... 10940, 11462, 13062, 13560, 13791
31 13899
301 12307

28 CFR

16 11308
50 11158

29 CFR

1611 11309
2590 13937
4022 13258
4044 13258

30 CFR

48 12252
50 12252
75 12252
165 14643
250 ..... 11310, 12438
948 10764
950 14643

Proposed Rules:

203 ..... 11557, 11559

31 CFR

10 13018
103 13260

Proposed Rules:

10 14428
103 ..... 12308, 14129

32 CFR

59 12280
62b 12280
73 12280
158 12280
190 12280
216 12280
221 12280
224 12280
229 12280
238 12280
248 12280
252 12280
258 12280
261 12280
271 12280
336 12280
345 12280
347 12280
371 12280
378 12280
388 12280

33 CFR

100 ..... 12132, 12135
117 ..... 10433, 12135, 12621, 13267, 14804
165 ..... 10436, 11505, 12136, 14379, 14381, 14645
402 14806

Proposed Rules:

100 ..... 14132, 14428
117 11172
165 ..... 12654, 14432, 14434

34 CFR

75 14994
76 14994
108 14994

36 CFR

219 10837
223 11508
1001 10608
1002 10608
1004 10608
1005 10608
1260 14808

Proposed Rules:

7 13792
13 10940
228 12656

37 CFR

1 12281
404 11510

38 CFR

Proposed Rules:

17 12154

39 CFR

111 13268
230 ..... 11160, 12285
232 11161

Proposed Rules:

111 11366

40 CFR

9 ..... 10438, 13708, 14648
52 ..... 10838, 10842, 11514, 12138, 12285, 12623, 13019, 13021, 13543, 13549, 13551, 13767, 14383, 14386, 14388, 14393, 14399, 14650, 14652, 14815, 14817
62 12623
63 ..... 10439, 14655
81 ..... 11162, 13021, 14393, 14399
93 12468
156 10438
165 10438
174 13269
180 ..... 11519, 11526, 13274, 14406, 14409, 14411
271 ..... 11533, 12141
272 ..... 11533, 11536
282 13769
799 13708

Proposed Rules:

50 ..... 11561, 12592
51 ..... 12240, 12592
52 ..... 10626, 10949, 11563, 12155, 12240, 12310, 13063, 14436, 14437, 14438, 14439, 14657, 14658, 14831
55 14662
63 14665
70 ..... 12240, 14439
71 12240
81 ..... 13063, 14438
158 ..... 12072, 13316
172 ..... 12072, 13316
180 11563
281 14442
721 12311
723 11484
745 ..... 10628, 11570, 13561

41 CFR

Proposed Rules:

60-2 14134
60-300 14135
102-118 ..... 13063, 14673

42 CFR

405 13469
410 13469
411 13469
413 13469
414 13469
424 13469
426 13469

Proposed Rules:

412 11027
413 11027

43 CFR

1820 10844
3100 14821

Proposed Rules:

3100 ..... 11577, 11559

3160 12656

44 CFR

64 ....13773, 13775
67 ....12289, 12297, 12298

Proposed Rules:

67 12324

45 CFR

2522 10610

Proposed Rules:

60 14135
2522 10630

47 CFR

0 10442
1 13279
2 13025
15 11539
54 13281
64 13281
73 ....11540, 13282, 13283, 13284, 13285, 13286, 13287, 13288, 14415, 14416
Ch. IX 13563

Proposed Rules:

Ch. I 13317
52 13323
73 ....11572, 13328, 13329, 13330, 13331, 14444

48 CFR

Ch. 2 14101
203 14099
207 ....14099, 14100, 14101, 14102, 14104
208 ....14102, 14106
209 14099
210 14104
215 14108
216 ....14102, 14106, 14108
217 14102
219 14104
225 14110
229 14199
237 14102
252 ....14099, 14110

Proposed Rules:

13 14445
232 14149
252 ....14149, 14151
1532 12660
1552 12660

49 CFR

1 11541
171 14586
172 14586
173 14586
175 14586
192 13289
571 12145
591 10846
592 10846
594 10846
661 14112
663 14112
1002 13939

Proposed Rules:

40 12331
391 13801
571 ....14673, 14675
578 12156
1150 13563
1180 13563

50 CFR

216 11314
229 11163
300 10850
600 ....10612, 10867
622 ....12148, 13304
648 ....10612, 10867, 13776
660 ....10614, 10869, 13942, 14416, 14824
679 ....10451, 10625, 10870, 10894, 11165, 11324, 11541, 12300, 12626, 13025, 13026, 13304, 13777, 14824, 14825
697 13027

Proposed Rules:

17 ....10631, 11367
18 14446
600 10459
622 12662
648 ....11060, 12665, 12669, 14467
679 14470
680 14153

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 24, 2006

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Emerald ash borer; published 3-24-06

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisers:

Commodity pool annual financial reports; electronic filing requirement; published 2-22-06

DEFENSE DEPARTMENT

Army Department

Freedom of Information Act Program; implementation; published 2-22-06

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Colorado; published 2-22-06

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Federal election activity; definition; published 2-22-06

Bipartisan Campaign Reform Act; implementation:

Federal election activity; definition; published 3-22-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs, medical devices, and biological products:

Human cells, tissues, and cellular and tissue-based products; donors eligibility determination

Correction; published 3-24-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey

Correction; published 3-24-06

INTERIOR DEPARTMENT

Land Management Bureau

Oil and gas leasing:

Acerage limitation exemptions and reinstatment of oil and gas leases; published 3-24-06

PERSONNEL MANAGEMENT OFFICE

Excepted service:

Temporary organizations; published 2-22-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 2-17-06

BAE Systems (Operations) Ltd.; published 2-17-06

Bombardier; published 2-17-06

Cessna; published 2-17-06

Meggitt Safety Systems Inc.; published 2-17-06

Class E airspace; published 3-24-06

TRANSPORTATION DEPARTMENT

Saint Lawrence Seaway Development Corporation

Seaway regulations and rules:

Tariff of tolls; published 3-24-06

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Relative values of optional forms of benefit; disclosure; published 3-24-06

RULES GOING INTO EFFECT MARCH 25, 2006

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey; published 3-9-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Tuberculosis in cattle and bison—

State and zone designations; comments due by 3-31-06; published 1-30-06 [FR 06-00839]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Peanut crop insurance provisions; comments due by 3-27-06; published 1-25-06 [FR E6-00855]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; industry free system; comments due by 3-31-06; published 3-1-06 [FR E6-02892]

DEFENSE DEPARTMENT

User charges; appropriate charges for authorized services; comments due by 3-27-06; published 1-26-06 [FR 06-00730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act) and Natural Gas Policy Act:

Unbundled sales service, blanket marketing certificates, and public utility market-based rate authorizations; record retention requirements; revisions; comments due by 3-29-06; published 2-27-06 [FR 06-01721]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Stationary gas turbines; performance standards; comments due by 3-27-06; published 2-24-06 [FR 06-01742]

Air programs:

Clean Air Act; alternate permit program approvals—-

Guam; comments due by 3-29-06; published 2-27-06 [FR 06-01740]

Guam; comments due by 3-29-06; published 2-27-06 [FR 06-01741]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 3-30-06; published 2-28-06 [FR 06-01850]

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 3-30-06; published 2-28-06 [FR 06-01787]

Pennsylvania; comments due by 3-29-06; published 2-27-06 [FR E6-02736]

Hazardous waste program authorizations:

New Hampshire; comments due by 3-29-06; published 2-27-06 [FR 06-01791]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ascorbic acid, etc.; comments due by 3-27-06; published 1-25-06 [FR 06-00574]

Sorbitol octanoate; comments due by 3-28-06; published 1-27-06 [FR 06-00756]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Mississippi; comments due by 3-30-06; published 2-22-06 [FR 06-01519]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Connecticut; comments due by 3-27-06; published 3-6-06 [FR 06-02105]

Florida; comments due by 3-27-06; published 2-23-06 [FR 06-01669]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Alaska; high capacity passenger vessels and marine highway system vessels; comments due by 3-30-06; published 2-28-06 [FR E6-02614]

Chesapeake Bay, MD; comments due by 3-29-06; published 2-27-06 [FR E6-02714]

LABOR DEPARTMENT

Federal Contract Compliance Programs Office

Affirmative action and nondiscrimination obligations of contractors and subcontractors:

Disabled veterans, recently separated veterans, etc.
Correction; comments due by 3-28-06; published 3-21-06 [FR 06-02769]
Equal opportunity survey
Correction; comments due by 3-28-06; published 3-21-06 [FR 06-02770]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine and metal and nonmetal mine safety and health:
Underground mines—
Rescue equipment and technology; comment request; comments due by 3-27-06; published 1-25-06 [FR 06-00722]
Coal mine and metal and nonmetal safety and health:
Underground mines—
Rescue equipment and technology; comment request; public meeting; comments due by 3-27-06; published 2-23-06 [FR 06-01748]

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:
Insurance cost accounting; comments due by 3-27-06; published 1-26-06 [FR E6-00975]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Federal credit unions; organization and operations; comments due by 3-28-06; published 1-27-06 [FR E6-00908]

PERSONNEL MANAGEMENT OFFICE

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; Title II implementation:
Reporting and best practices; comments due by 3-27-06; published 1-25-06 [FR E6-00933]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 3-27-06; published 2-8-06 [FR E6-01679]
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 3-28-06; published 1-27-06 [FR 06-00782]
Rolls-Royce plc; comments due by 3-31-06; published 1-30-06 [FR E6-01092]
Turbomeca S.A.; comments due by 3-27-06; published 1-24-06 [FR 06-00522]
Airworthiness standards:
Special conditions—
Cessna Aircraft Co. Model 501 and 551 airplanes; comments due by 3-30-06; published 2-28-06 [FR 06-01810]
Raytheon Aircraft Co. Model BAE 125 Series 800A airplanes; comments due by 3-30-06; published 2-28-06 [FR 06-01808]
Class D airspace; comments due by 3-30-06; published 2-28-06 [FR 06-01811]
Class D and E airspace; comments due by 3-30-06; published 2-28-06 [FR 06-01812]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:
New car assessment program; safety labeling; comments due by 3-31-06; published 1-30-06 [FR 06-00827]
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Miscellaneous amendments; comments due by 3-30-06; published 12-30-05 [FR 05-24421]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous materials transportation:
International transport standards and regulations use; authorization requirements; comments due by 3-28-06; published 1-27-06 [FR 06-00516]

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.J. Res. 47/P.L. 109–182

Increasing the statutory limit on the public debt. (Mar. 20, 2006; 120 Stat. 289)

S. 1578/P.L. 109–183

Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005 (Mar. 20, 2006; 120 Stat. 290)

Last List March 23, 2006

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