AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

5–4–06 Thursday
Vol. 71 No. 86 May 4, 2006

Pages 26189–26408

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, May 9, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 86

Thursday, May 4, 2006

Agricultural Marketing Service
RULES
Shell eggs; voluntary grading; eligibility requirements
Correction, 26189

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Utilities Service

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
San Carlos Bay, FL, 26230–26232
Regattas and marine parades:
Escape from Fort Delaware Triathalon, 26225–26227
Maryland Swim for Life, 26227–26229
Thunder on the Narrows boat races, 26229–26230
PROPOSED RULES
Drawbridge operations:
Louisiana, 26290–26292
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Nahant Bay, Lynn, MA; Fourth of July fireworks display, 26292–26294
Regattas and marine parades:
Catholic Charities Dragon Boat Races, 26285–26287
Fourth of July Celebration Fireworks in Weymouth, MA, 26294–26296
Ragin' on the River, 26287–26290

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
RULES
Right to Financial Privacy Act of 1978; obtaining information from financial institutions; practices and procedures, 26220–26225

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Organichem Corp.; correction, 26407

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Technology and Media Services for Individuals with Disabilities Program, 26353–26357

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

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Consumer products; energy conservation program:
Classifying products as covered products; household definition, 26275–26281

Environmental Protection Agency
PROPOSED RULES
Air programs:
Ambient air quality standards, national—
Exceptional events; data treatment, 26296–26297
Exceptional events; data treatment; correction, 26296
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania, 26297–26299
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
West Virginia, 26299–26310
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26357–26364
Air pollution control:
State operating permits programs—
Georgia, 26364–26365
Meetings:
Considerations for developing alternative health risk assessment approaches for addressing multiple chemicals, exposures and effects; peer-review workshop, 26365–26366

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 26191–26194
Airworthiness standards:
Special conditions—
Sabreliner Model NA-265-60 airplanes, 26189–26191
Restricted areas, 26194–26196
Standard instrument approach procedures, 26196–26199
PROPOSED RULES
Airworthiness directives:
Rolls-Royce Deutschland Ltd & Co., 26282–26284
Airworthiness standards:
Class E airspace, 26284–26285
NOTICES
Environmental statements; notice of intent:
Dayton International Airport, OH; canceled, 26398

Federal Communications Commission
RULES
Practice and procedure:
Benefits reserved for designated entities; competitive bidding rules and procedures, 26245–26254
PROPOSED RULES
Radio stations; table of assignments:
Texas, 26310–26311

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 26366–26367

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Business practice standards and communication protocols for public utilities, 26199–26213

Federal Highway Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26398–26399
Safe, Accountable, Flexible, Efficient Transportation Equity Act:
Real-Time System Management Information Program, 26399–26403

Federal Railroad Administration
NOTICES
Safety advisories, bulletins, and directives:
Vertical load dividers, 26403–26404

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 26367

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Alameda Whipsnake, 26311–26315
Rota bridled white-eye, 26315–26318

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Georgia
E.I. du Pont de Nemours and Company, Inc.; crop protection products manufacturing facilities, 26321

Forest Service
NOTICES
Appealable decisions; legal notice:
Southwestern Region, 26319–26320

Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority Community Health Partnership HIV/AIDS Demonstration Grant Program, 26367–26373
Young Women Attending Minority Institutions HIV Prevention Program, 26373–26380

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26383–26384
Grants and cooperative agreements; availability, etc.:
Section 202 Demonstration Pre-Development Grant Program, 26384–26391
Privacy Act:
Computer matching programs; correction, 26391

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26405–26406
Meetings:
Taxpayer Advocacy Panels, 26406

International Trade Administration
NOTICES
Antidumping:
Ball bearings and parts from—
Japan and Singapore, 26321–26322
Fresh garlic from—
China, 26322–26333
Honey from—
Argentina, 26333–26334
Silicon metal from—
China and Brazil, 26334–26335
Steel concrete reinforcing bars from—
Latvia, 26335–26336

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 26391–26392

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26380–26382

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon, 26254–26266
NOTICES
Marine mammals:
Incidental taking: authorization letters, etc—
ASRC Energy Services, Lynx Enterprises, Inc.: on-ice seismic operations on Harrison Bay portion of Beaufort Sea, AK; ringed and bearded seals, 26336–26340
Reports and guidance documents; availability, etc.:
Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports, 26340–26351
Scientific research permit applications, determinations, etc., 26351–26353

National Park Service
RULES
Special regulations:
Gulf Island National Seashore, FL and MS; personal watercraft use, 26232–26245
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
American Museum of Natural History, New York, NY; correction, 26407

Nuclear Regulatory Commission
PROPOSED RULES
Nuclear power reactors; approaches to risk-inform and performance-base requirements, 26267–26275
NOTICES
Regulatory guides; issuance, availability, and withdrawal, 26392–26393
Reports and guidance documents; availability, etc.:
Abnormal occurrences; annual report to Congress, 26393–26397

Rural Utilities Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Television Digital Transition Grant Program; correction, 26320

State Department
NOTICES
Cultural property:
Bolivia; pre-Colombian archaeological materials; U.S. import restrictions; memorandum of understanding, 26397
Meetings:
Cultural Property Advisory Committee, 26397
International Telecommunication Advisory Committee, 26397–26398

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26382–26383

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration

Treasury Department
See Internal Revenue Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Suspicious transactions; mutual funds reporting requirements, 26213–26220
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26405

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
56 26189

10 CFR
Proposed Rules:
50 26267
53 26267
430 26275

14 CFR
25 26189
39 26191
73 26194
97 26196
Proposed Rules:
39 26282
71 26284

18 CFR
35 26199
37 26199
38 26199

31 CFR
103 26213

32 CFR
275 26220

33 CFR
100 (3 documents) 26225, 26227, 26229
165 26230
Proposed Rules:
100 (2 documents) 26285, 26287
117 26290
165 (2 documents) 26292, 26294

36 CFR
7 26232

40 CFR
Proposed Rules:
50 (2 documents) 26296
51 26296
52 (2 documents) 26297, 26299
81 26299

47 CFR
1 26245
Proposed Rules:
73 26310

50 CFR
660 26254
Proposed Rules:
17 (2 documents) 26311, 26315

Rules and Regulations

Federal Register

Vol. 71, No. 86

Thursday, May 4, 2006

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–98–006]

RIN 0581–AC50

Eligibility Requirements for USDA Graded Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on April 19, 2006, a document regarding Voluntary Shell Egg Grading regulations. The final rule provides that shell eggs must not have been previously shipped for retail sale in order to be officially identified with a USDA consumer grademark and changes the definition of the term *eggs of current production* from 30 days to 21 days, thereby making eggs that were laid more than 21 days before the date packing ineligible to be officially identified with a USDA-consumer grademark. In that document, a number appearing in one of the columns in Table 1 was typed incorrectly. This document corrects that error.

DATES: Effective on May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Charles L. Johnson, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service published a document in the **Federal Register** on April 19, 2006 (71 FR 20288) amending regulations pertaining to Voluntary Grading of Shell Eggs. In that document, FR Doc. 06–3693, the number appearing in the Estimated value, Total value column should read 899,100, not 899,10. Therefore, in the **Federal Register** dated April 19, 2006, (71 FR 20288), in Table 1, under the heading Estimated value, in the Total value column ''899,10'' is corrected to read ''899,100''.

Dated: April 28, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4176 Filed 5–3–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM345, Special Conditions No. 25–317–SC]

Special Conditions: Sabreliner Model NA–265–60; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sabreliner Model NA–265–60 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Honeywell Model AM–250 digital altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 14, 2006. We must receive your comments by June 5, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM345, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM345. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable, because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

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

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped

postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 17, 2005, Flight Test Associates of Mojave, California, applied to the FAA, Los Angeles Aircraft Certification Office, for a supplemental type certificate (STC) to modify Sabreliner Model NA–265–60 airplanes. This model, currently approved under Type Certificate No. A2WE, is powered by two Pratt and Whitney Turbo Wasp JT12A–8 engines and carries up to ten passengers. The modification incorporates installation of dual Honeywell Model AM–250 digital altimeters that perform critical functions. These digital altimeters have the potential to be vulnerable to high-intensity radiated fields external to the airplanes.

Type Certification Basis

Under 14 CFR 21.101, Flight Test Associates must show that the Sabreliner Model NA–265–60 airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A2WE include Civil Air Regulations 4b, as amended by Amendments 4b–1 through 4b–9.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the modified Sabreliner Model NA–265–60 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sabreliner Model NA265–60 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued under § 11.38 and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Flight Test Associates apply at a later date for an STC to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the Sabreliner Model NA–265–60 airplanes modified by Flight Test Associates will incorporate dual primary altimeters that perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Sabreliner Model NA–265–60 airplanes modified by Flight Test Associates. These special conditions require that new primary altimeters that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Sabreliner Model NA–265–60 airplanes modified by Flight Test Associates. Should Flight Test Associates apply at a later date for an STC to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Sabreliner Model NA–265–60 airplanes. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Sabreliner Model NA–265–60 airplanes modified by Flight Test Associates.

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

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4187 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22739; Directorate Identifier 2005–NM–098–AD; Amendment 39–14583; AD 2006–09–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–200 and A310–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300–600, A310–200, and A310–300 series airplanes. This AD requires modifying the forward outflow valve of the pressure regulation subsystem. This AD results from a report of accidents resulting in injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure, causing the doors to rapidly open. In these accidents, the buildup of residual pressure in the cabin was caused by the blockage of the outflow valve by an insulation blanket. We are issuing this AD to prevent an insulation blanket or other debris from being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to the inability to control cabin pressurization and adversely affect continued safe flight of the airplane.

DATES: This AD becomes effective June 8, 2006.

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

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300–600, A310–200, and A310–300 series airplanes. That NPRM was published in the **Federal Register** on October 20, 2005 (70 FR 61078). That NPRM proposed to require modifying the forward outflow valve of the pressure regulation subsystem.

Comments

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

Supportive Comments

Airline Pilots Association International concurs with the intent and proposed language of the NPRM. The National Transportation Safety Board supports the proposed rulemaking.

Request To Include Revised Service Information

Airbus asks that we change the NPRM to refer to Airbus Service Bulletins A300–53–6149 (for Model A300–600 series airplanes) and A310–53–2121 (for Model A310–200 and A310–300 series airplanes), both Revision 01, both dated September 12, 2005, as additional sources of service information for accomplishing the modification. The NPRM refers to the original issue of the service bulletins as the acceptable sources of service information for accomplishing the proposed modification.

We agree with the request. The procedures in Revision 01 of the referenced service bulletins are essentially the same as those in the original issue of the service bulletins. Accordingly, we have revised paragraph (f) of this AD to refer to Revision 01 of the service bulletins as the appropriate

source of service information for accomplishing the required modification. We have also added a statement to paragraph (f) that gives credit for modifications accomplished before the effective date of this AD per the original issue of the service bulletins.

Requests To Extend Compliance Time

United Parcel Service (UPS) and American Airlines (AAL) ask that the compliance time for the modification specified in the NPRM be extended.

UPS states that considering the safety improvement provided by AD 2004–14–08, amendment 39–13717 (69 FR 41925, July 13, 2004), referenced in the NPRM in the ''Other Relevant Rulemaking'' section, the compliance time should be changed from 22 months to the next C-check maintenance visit or 30 months, whichever occurs later. UPS notes that this would allow the subject modification to be done during normal heavy maintenance.

AAL states that compliance periods are based upon, among other factors, an analysis of the purported risk and an assessment of mitigating factors that may alter the scope of risk. AAL adds that it is the largest U.S. operator of the passenger version of the A300–600 airplanes (34 airplanes), and notes that other significant U.S. operators are freight operators which carry only crew on their airplanes. All AAL airplanes were modified soon after identification of the unsafe condition; therefore, a significant portion of the risk was eliminated. AAL states that this mitigating action was not included in the analysis, and if included, the compliance time could be extended and would still achieve an equivalent level of airplane safety. AAL asks that the compliance time be extended to 36 months.

We agree that the compliance time may be extended; we have reconsidered the urgency of the unsafe condition and the amount of work related to the required modification. Our reconsideration includes the data provided by AAL which show that it has accomplished the required modification on all its passenger airplanes, and that other affected airplanes are freight carriers, which operate at a lower risk level than passenger airplanes. We find that extending the compliance time from 22 to 36 months will not adversely affect safety, and, for the majority of affected operators, will allow the required modification to be performed during regularly scheduled maintenance at a base where special equipment and trained maintenance personnel will be available if necessary. We have changed the compliance time for accomplishing the modification required by paragraph (f) of this AD accordingly.

Request To Clarify Applicability

Airbus asks that the applicability in the NPRM be changed for Model A310 series airplanes to match the effectivity of French airworthiness directive F–2005–061 R1, dated May 25, 2005. The French airworthiness directive includes airplanes on which Airbus Modification 3881 has been embodied in production or Airbus Service Bulletin A310–21–2012 has been embodied in service. The commenter states that this clarification in the scope of the applicability would be useful for operators of Model A310–200 and –300 series airplanes.

We agree that the applicability in this AD should be changed to match the effectivity in the French airworthiness directive for Airbus Model A310–200 and –300 series airplanes. Therefore, we have changed paragraph (c) of this AD, for clarification, to specify that the AD applies to Airbus Model A310–200 and –300 series airplanes on which Airbus Modification 3881 has been done in production or Airbus Service Bulletin A310–21–2012 has been done in service.

Request To Reference All Revised Service Bulletins

AAL states that although the NPRM does not indicate compliance is required with a specific revision level of the service bulletin, subsequent revisions of the service bulletin that meet the intent of the NPRM should be included.

We do not agree with the request. Approving revisions of service bulletins that have not yet been released would violate the Office of the Federal Register's (OFR) regulations for approving materials that are incorporated by reference. In general terms, we are required by these OFR regulations either to publish the service document contents as part of the actual AD language, or to submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR has approved it for ''incorporation by reference.'' To allow operators to use later revisions of a referenced document, we must either revise the AD to reference the specific later revisions, or operators may request approval to use later revisions as an alternative method of compliance (AMOC) with this AD. Operators may request approval of an AMOC for this AD under the provisions of paragraph (g)(1) of this AD. We have made no change to the AD in this regard.

Request for Alternative Modification

AAL asks that the alternative modification (installation of a larger outflow valve inlet screen) made to its fleet be included as one of the available compliance options in the final rule. AAL states that it took the initiative to redesign the outflow valve inlet screen on both the forward and aft outflow valves. AAL notes that the original screen can be completely covered with the single, standard-size 22-inch-wide insulation blanket commonly found in close proximity to the valve. A cylindrical inlet screen was added between the original inlet screen and the outflow valve; the new design adds over 250 percent to the surface area and adds a critical third dimension to the screen shape. The increase in surface area ensures that if an insulation blanket were to become entangled in the outflow valve screen, the screen would be large enough to maintain adequate flow to prevent the buildup of cabin pressure.

We do not agree with the request; the alternative modification is unique to AAL and therefore should not be included in the final rule. An AMOC is the appropriate avenue for approval of that method of compliance. In light of the above, we consider the requirements in this AD applicable to AAL airplanes until AAL obtains approval for an AMOC for this AD under the provisions of paragraph (g)(1) of this AD. No change to the AD is necessary in this regard.

Request To Increase Work Hours

AAL asks that the work hours specified to accomplish the modification be increased, and adds that the referenced service information shows the work hours necessary as 5.5 for each airplane, using two kits, but the NPRM estimates only 3 to 4 work hours per airplane.

We do not agree to increase the work hours. The estimate of 5.5 work hours specified in the service information includes time for gaining access and closing up. The cost analysis in AD rulemaking actions, however, typically does not include costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs may vary significantly among operators and are almost impossible to calculate. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct

costs. However, the estimate of 3 to 4 work hours, as specified in this AD, represents the time necessary to perform only the actions actually required by this AD. We have made no change to the AD in this regard.

Typographical Error

AAL and UPS note that the service bulletin reference identified in the NPRM for Airbus Model A300–600 series airplanes is incorrect. The NPRM referenced Airbus Service Bulletin A300–63–6149, but the correct reference is Airbus Service Bulletin A300–53–6149; the service bulletin reference has been corrected throughout this AD.

Conclusion

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

Costs of Compliance

This AD affects about 169 airplanes of U.S. registry. The modification takes between 3 and 4 work hours per airplane, depending on airplane configuration, at an average labor rate of $65 per work hour. Required parts cost ranges between $120 and $420 per kit (2 kits per airplane). Based on these figures, the estimated cost of the modification required by this AD for U.S. operators ranges between $73,515 and $185,900 or between $435 and $1,100 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–09–12 Airbus: Amendment 39–14583. Docket No. FAA–2005–22739; Directorate Identifier 2005–NM–098–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes on which Airbus Modification 3881 has been done in production or Airbus Service Bulletin A310–21–2012 has been done in service; certificated in any category; excluding airplanes on which Airbus Modification 12921 has been done in production.

Unsafe Condition

(d) This AD results from a report of accidents resulting in injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure, causing the doors to rapidly open. In these accidents, the buildup of residual pressure in the cabin was caused by the blockage of the outflow valve by an insulation blanket. We are issuing this AD to prevent an insulation blanket or other debris from being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to the inability to control cabin pressurization and adversely affect continued safe flight of the airplane.

Compliance

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

Modification

(f) Within 36 months after the effective date of this AD: Modify the forward outflow valve of the pressure regulation subsystem by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6149 (for Model A300–600 series airplanes) or A310–53–2121 (for Model A310–200 and A310–300 series airplanes) both Revision 01 dated September 12, 2005, as applicable. Accomplishing the modification before the effective date of this AD, in accordance with Airbus Service Bulletin A300–53–6149 or A310–53–2121, both dated February 25, 2005, as applicable, is acceptable for compliance with the modification in this paragraph.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) French airworthiness directive F–2005–061 R1, dated May 25, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A300–53–6149, Revision 01, dated September 12, 2005; or Airbus Service Bulletin A310–53–2121, Revision 01, dated September 12, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these

documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4135 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2006–23531; Airspace Docket No. 04–ASO–14]

RIN 2120–AA66

Modification of Restricted Areas R–3002A, B, C, D, E and F; and Establishment of Restricted Area R–3002G; Fort Benning, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the boundaries of the Restricted Area R–3002 range complex at Fort Benning, GA. The U.S. Army requested these modifications as a result of a land exchange agreement between Fort Benning and the City of Columbus, GA. In addition, a portion of the southwest section of R–3002, within the existing restricted airspace, is redesignated as a separate restricted area, R–3002G, to better accommodate instrument approach procedures at Lawson Army Air Field (AAF). The internal boundaries between restricted area subdivisions are also realigned slightly to permit more efficient scheduling and utilization of the range complex. Finally, the names of the controlling agency and using agency for the restricted areas are changed to reflect their current titles.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 30, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify R–3002A, B, C, D, E, and F; and establish R–3002G at Fort Benning, Georgia (71 FR 4836). Interested parties were invited to participate in this rulemaking effort by submitting comments on this proposal to the FAA. No comments were received in response to the notice.

Restricted areas in 14 CFR part 73 are published in subpart B of FAA Order 7400.8M, dated January 6, 2006 and effective February 16, 2006. The restricted areas listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations 14 CFR part 73 by adjusting the boundaries of Restricted Areas R–3002A, B, C, D, E, and F, Fort Benning, GA; and redesignates a section of existing restricted airspace as a separate area titled R–3002G. The boundary amendments revoke existing restricted airspace over land ceded to the City of Columbus, GA, in the northwest section of the range, and establish new restricted airspace to the south of existing Restricted Areas R–3002A, B, and C, over land ceded by the City to Fort Benning. This action also realigns the internal dividing lines between restricted areas to permit better scheduling and utilization of the complex. The FAA is also changing the name of the controlling agency from ''FAA, ATC Tower, Columbus, GA,'' to ''FAA, Atlanta TRACON,'' and the name of the using agency from ''Commanding Officer, Fort Benning, GA,'' to ''U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.'' These name changes reflect the current titles of the responsible agencies.

These changes will facilitate the release of restricted airspace that is not needed for military operations, and will enhance the efficient use of the navigable airspace.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The Department of the Army, Fort Benning, Georgia (GA) conducted an environmental assessment (EA) on a landfill exchange, and an environmental impact statement (EIS) on a land exchange with the City of Columbus, GA. The landfill exchange related to an area located north of Fort Benning and the land exchange related to an area south. The EA resulted in a Finding of No Significant Impact (FONSI) and the parties implemented the action in 1997. The EIS resulted in a Record of Decision (ROD) and the parties implemented the action in 2000. Both of these exchanges require minor modifications to Restricted Area 3002 (R–3002). The U.S. Army submitted the proposal for modification of R–3002, identified as the Land Exchange Airspace Redesignation.

In January 2004, the U.S. Army conducted a review of the EA/FONSI for the landfill and the EIS/ROD for the land exchange and determined that the contents remained substantially valid and do not warrant preparation of a new EA or EIS, nor a supplement or amendment to the FONSI or ROD. They conducted the review in accordance with the then current applicable U.S. Army directives and FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts.''

The FAA reviewed the proponent's environmental documentation and determined that there is no reasonable expectation for this airspace action to cause any potentially significant environmental impacts and that it will not trigger any extraordinary circumstances, which would warrant preparation of additional environmental documentation. The FAA, therefore, has determined that this action qualifies for categorical exclusion from further environmental analysis under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraphs 303d, 307c, and 311c.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.30 [Amended]

■ 2. Section 73.30 is amended as follows:

* * * * *

R–3002A Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence along the Central of Georgia Railroad to lat. 32°19′09″ N., long. 84°42′27″ W.; to lat. 32°19′14″ N., long. 84°42′52″ W.; to lat. 32°19′23″ N., long. 84°43′18″ W.; to lat. 32°19′35″ N., long. 84°43′49″ W.; to lat. 32°19′43″ N., long. 84°44′29″ W.; to lat. 32°19′55″ N., long. 84°45′06″ W.; to lat. 32°20′13″ N., long. 84°45′54″ W.; to lat. 32°20′30″ N., long. 84°46′32″ W.; to lat. 32°20′53″ N., long. 84°46′55″ W.; to lat. 32°20′55″ N., long. 84°47′38″ W.; to lat. 32°15′25″ N., long. 84°47′32″ W.; to lat. 32°15′26″ N., long. 84°48′37″ W.; to lat. 32°15′17″ N., long. 84°48′37″ W.; thence along River Bend Road to lat. 32°15′17″ N., long. 84°48′48″ W.; to lat. 32°15′06″ N., long. 84°49′08″ W.; to lat. 32°14′48″ N., long. 84°49′26″ W.; to lat. 32°14′38″ N., long. 84°49′53″ W.; to lat. 32°14′32″ N., long. 84°50′15″ W.; to lat. 32°14′22″ N., long. 84°50′30″ W.; to lat. 32°14′12″ N., long. 84°50′36″ W.; to lat. 32°14′22″ N., long. 84°52′22″ W.; to lat. 32°15′07″ N., long. 84°52′21″ W.; to lat. 32°15′06″ N., long. 84°52′38″ W.; to lat, 32°15′33″ N., long. 84°52′37″ W.; to lat. 32°15′34″ N., long. 84°53′11″ W.; to lat. 32°20′15″ N., long. 84°58′36″ W.; thence along Dixie Rd./First Division Rd. to lat. 32°20′36″ N., long. 84°58′15″ W.; to lat. 32°20′53″ N., long. 84°57′55″ W.; to lat. 32°21′03″ N., long. 84°57′40″ W.; to lat. 32°21′11″ N., long. 84°57′24″ W.; to lat. 32°21′08″ N., long. 84°56′55″ W.; to lat. 32°21′13″ N., long. 84°56′04″ W.; to lat. 32°21′33″ N., long. 84°55′35″ W.; to lat. 32°21′50″ N., long. 84°55′16″ W.; to lat. 32°21′53″ N., long. 84°55′00″ W.; to lat. 32°22′06″ N., long. 84°54′41″ W.; to lat. 32°23′01″ N., long. 84°55′44″ W.; to lat. 32°24′48″ N., long. 84°52′52″ W.; to lat. 32°25′36″ N., long. 84°52′52″ W.; to lat. 32°25′44″ N., long. 84°53′30″ W.; to lat. 32°26′19″ N., long. 84°53′31″ W.; to lat. 32°26′20″ N., long. 84°53′54″ W.; to lat. 32°27′19″ N., long. 84°53′53″ W.; to lat. 32°27′17″ N., long. 84°52′10″ W.; to lat. 32°28′46″ N., long. 84°52′08″ W.; to lat. 32°28′44″ N., long. 84°50′47″ W.; to lat. 32°29′43″ N., long. 84°50′59″ W.; to lat. 32°30′35″ N., long. 84°50′50″ W.; to lat. 32°30′39″ N., long. 84°50′23″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002B Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence along the Central of Georgia Railroad to lat. 32°19′09″ N., long. 84°42′27″ W.; to lat. 32°19′14″ N., long. 84°42′52″ W.; to lat. 32°19′23″ N., long. 84°43′18″ W.; to lat. 32°19′35″ N., long. 84°43′49″ W.; to lat. 32°19′43″ N., long. 84°44′29″ W.; to lat. 32°19′55″ N., long. 84°45′06″ W.; to lat. 32°20′13″ N., long. 84°45′54″ W.; to lat. 32°20′30″ N., long. 84°46′32″ W.; to lat. 32°20′53″ N., long. 84°46′55″ W.; to lat. 32°20′55″ N., long. 84°47′38″ W.; to lat. 32°15′25″ N., long. 84°47′32″ W.; to lat. 32°15′26″ N., long. 84°48′37″ W.; to lat. 32°15′17″ N., long. 84°48′37″ W.; thence along River Bend Road to lat. 32°15′17″ N., long. 84°48′48″ W.; to lat. 32°15′06″ N., long. 84°49′08″ W.; to lat. 32°14′48″ N., long. 84°49′26″ W.; to lat. 32°14′38″ N., long. 84°49′53″ W.; to lat. 32°14′32″ N., long. 84°50′15″ W.; to lat. 32°14′22″ N., long. 84°50′30″ W.; to lat. 32°14′12″ N., long. 84°50′36″ W.; to lat. 32°14′22″ N., long. 84°52′22″ W.; to lat. 32°15′07″ N., long. 84°52′21″ W.; to lat. 32°15′06″ N., long. 84°52′38″ W.; to lat, 32°15′33″ N., long. 84°52′37″ W.; to lat. 32°15′34″ N., long. 84°53′11″ W.; to lat. 32°20′15″ N., long. 84°58′36″ W.; thence along Dixie Rd/First Division Rd to lat. 32°20′36″ N., long. 84°58′15″ W.; to lat. 32°20′53″ N., long. 84°57′55″ W.; to lat. 32°21′03″ N., long. 84°57′40″ W.; to lat. 32°21′11″ N., long. 84°57′24″ W.; to lat. 32°21′08″ N., long. 84°56′55″ W.; to lat. 32°21′13″ N., long. 84°56′04″ W.; to lat. 32°21′33″ N., long. 84°55′35″ W.; to lat. 32°21′50″ N., long. 84°55′16″ W.; to lat. 32°21′53″ N., long. 84°55′00″ W.; to lat. 32°22′06″ N., long. 84°54′41″ W.; to lat. 32°23′01″ N., long. 84°55′44″ W.; to lat. 32°24′48″ N., long. 84°52′52″ W.; to lat. 32°25′36″ N., long. 84°52′52″ W.; to lat. 32°25′44″ N., long. 84°53′30″ W.; to lat. 32°26′19″ N., long. 84°53′31″ W.; to lat. 32°26′20″ N., long. 84°53′54″ W.; to lat. 32°27′19″ N., long. 84°53′53″ W.; to lat. 32°27′17″ N., long. 84°52′10″ W.; to lat. 32°28′46″ N., long. 84°52′08″ W.; to lat. 32°28′44″ N., long. 84°50′47″ W.; to lat. 32°29′43″ N., long. 84°50′59″ W.; to lat. 32°30′35″ N., long. 84°50′50″ W.; to lat. 32°30′39″ N., long. 84°50′23″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002C Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence along the Central of Georgia Railroad to lat. 32°19′09″ N., long. 84°42′27″ W.; to lat. 32°19′14″ N., long. 84°42′52″ W.; to lat. 32°19′23″ N., long. 84°43′18″ W.; to lat. 32°19′35″ N., long. 84°43′49″ W.; to lat. 32°19′43″ N., long. 84°44′29″ W.; to lat. 32°19′55″ N., long. 84°45′06″ W.; to lat. 32°20′13″ N., long. 84°45′54″ W.; to lat. 32°20′30″ N., long. 84°46′32″ W.; to lat. 32°20′53″ N., long. 84°46′55″ W.; to lat. 32°20′55″ N., long. 84°47′38″ W.; to lat. 32°15′25″ N., long. 84°47′32″ W.; to lat. 32°15′26″ N., long. 84°48′37″ W.; to lat. 32°15′17″ N., long. 84°48′37″ W.; thence along River Bend Road to lat. 32°15′17″ N., long. 84°48′48″ W.; to lat. 32°15′06″ N., long. 84°49′08″ W.; to lat. 32°14′48″ N., long. 84°49′26″ W.; to lat. 32°14′38″ N., long. 84°49′53″ W.; to lat. 32°14′32″ N., long. 84°50′15″ W.; to lat. 32°14′22″ N., long. 84°50′30″ W.; to lat. 32°14′12″ N., long. 84°50′36″ W.; to lat. 32°14′22″ N., long. 84°52′22″ W.; to lat. 32°15′07″ N., long. 84°52′21″ W.; to lat. 32°15′06″ N., long. 84°52′38″ W.; to lat, 32°15′33″ N., long. 84°52′37″ W.; to lat. 32°15′34″ N., long. 84°53′11″ W.; to lat. 32°20′15″ N., long. 84°58′36″ W.; thence along Dixie Rd/First Division Rd to lat. 32°20′36″ N., long. 84°58′15″ W.; to lat. 32°20′53″ N., long. 84°57′55″ W.; to lat. 32°21′03″ N., long. 84°57′40″ W.; to lat. 32°21′11″ N., long. 84°57′24″ W.; to lat. 32°21′08″ N., long. 84°56′55″ W.; to lat. 32°21′13″ N., long. 84°56′04″ W.; to lat. 32°21′33″ N., long. 84°55′35″ W.; to lat. 32°21′50″ N., long. 84°55′16″ W.; to lat. 32°21′53″ N., long. 84°55′00″ W.; to lat. 32°22′06″ N., long. 84°54′41″ W.; to lat. 32°23′01″ N., long. 84°55′44″ W.; to lat. 32°24′48″ N., long. 84°52′52″ W.; to lat. 32°25′36″ N., long. 84°52′52″ W.; to lat. 32°25′44″ N., long. 84°53′30″ W.; to lat. 32°26′19″ N., long. 84°53′31″ W.; to lat. 32°26′20″ N., long. 84°53′54″ W.; to lat. 32°27′19″ N., long. 84°53′53″ W.; to lat. 32°27′17″ N., long. 84°52′10″ W.; to lat. 32°28′46″ N., long. 84°52′08″ W.; to lat. 32°28′44″ N., long. 84°50′47″ W.; to lat. 32°29′43″ N., long. 84°50′59″ W.; to lat. 32°30′35″ N., long. 84°50′50″ W.; to lat. 32°30′39″ N., long. 84°50′23″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002D Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°31′52″ N., long. 84°50′25″ W.; to lat. 32°33′05″ N., long. 84°45′27″ W.; thence along the Central of Georgia Railroad to lat. 32°32′52″ N., long. 84°45′00″ W.; to lat. 32°32′43″ N., long. 84°44′08″ W.; to lat. 32°32′34″ N., long.

84°43′40″ W.; to lat. 32°32′22″ N., long. 84°43′13″ W.; to lat. 32°32′18″ N., long. 84°42′53″ W.; to lat. 32°32′08″ N., long. 84°42′38″ W.; to lat. 32°32′05″ N., long. 84°42′26″ W.; to lat. 32°32′11″ N., long. 84°42′12″ W.; to lat. 32°32′13″ N., long. 84°41′54″ W.; to lat. 32°32′10″ N., long. 84°41′38″ W.; to lat. 32°32′06″ N., long. 84°41′25″ W.; to lat. 32°32′08″ N., long. 84°41′17″ W.; to lat. 32°32′15″ N., long. 84°41′01″ W.; to lat. 32°32′20″ N., long. 84°40′56″ W.; to lat. 32°32′07″ N., long. 84°40′44″ W.; to lat. 32°31′06″ N., long. 84°41′43″ W.; to lat. 32°31′04″ N., long. 84°40′54″ W.; to lat. 32°32′04″ N., long. 84°38′16″ W.; to lat. 32°29′16″ N., long. 84°38′17″ W.; to lat. 32°29′10″ N., long. 84°39′25″ W.; to lat. 32°18′35″ N., long. 84°39′30″ W.; to lat. 32°18′23″ N., long. 84°41′09″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002E Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°31′52″ N., long. 84°50′25″ W.; to lat. 32°33′05″ N., long. 84°45′27″ W.; thence along the Central of Georgia Railroad to lat. 32°32′52″ N., long. 84°45′00″ W.; to lat. 32°32′43″ N., long. 84°44′08″ W.; to lat. 32°32′34″ N., long. 84°43′40″ W.; to lat. 32°32′22″ N., long. 84°43′13″ W.; to lat. 32°32′18″ N., long. 84°42′53″ W.; to lat. 32°32′08″ N., long. 84°42′38″ W.; to lat. 32°32′05″ N., long. 84°42′26″ W.; to lat. 32°32′11″ N., long. 84°42′12″ W.; to lat. 32°32′13″ N., long. 84°41′54″ W.; to lat. 32°32′10″ N., long. 84°41′38″ W.; to lat. 32°32′06″ N., long. 84°41′25″ W.; to lat. 32°32′08″ N., long. 84°41′17″ W.; to lat. 32°32′15″ N., long. 84°41′01″ W.; to lat. 32°32′20″ N., long. 84°40′56″ W.; to lat. 32°32′07″ N., long. 84°40′44″ W.; to lat. 32°31′06″ N., long. 84°41′43″ W.; to lat. 32°31′04″ N., long. 84°40′54″ W.; to lat. 32°32′04″ N., long. 84°38′16″ W.; to lat. 32°29′16″ N., long. 84°38′17″ W.; to lat. 32°29′10″ N., long. 84°39′25″ W.; to lat. 32°18′35″ N., long. 84°39′30″ W.; to lat. 32°18′23″ N., long. 84°41′09″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002F Fort Benning, GA [Amended]

By removing the current Boundaries, Controlling agency, and Using agency and substituting the following:

Boundaries. Beginning at lat. 32°27′17″ N., long. 84°52′10″ W.; to lat. 32°28′46″ N., long. 84°52′08″ W.; to lat. 32°28′44″ N., long. 84°50′47″ W.; to lat. 32°29′43″ N., long. 84°50′59″ W.; to lat. 32°30′35″ N., long. 84°50′50″ W.; to lat. 32°30′39″ N., long. 84°50′23″ W.; to lat. 32°31′12″ N., long. 84°50′11″ W.; to lat. 32°31′52″ N., long. 84°50′25″ W.; to lat. 32°33′05″ N., long. 84°45′27″ W; thence along the Central of Georgia Railroad to lat. 32°32′52″ N., long. 84°45′00″ W.; to lat. 32°32′43″ N., long. 84°44′08″ W.; to lat. 32°32′34″ N., long. 84°43′40″ W.; to lat. 32°32′22″ N., long. 84°43′13″ W.; to lat. 32°32′18″ N., long. 84°42′53″ W.; to lat. 32°32′08″ N., long. 84°42′38″ W.; to lat. 32°32′05″ N., long. 84°42′26″ W.; to lat. 32°32′11″ N., long. 84°42′12″ W.; to lat. 32°32′13″ N., long. 84°41′54″ W.; to lat. 32°32′10″ N., long. 84°41′38″ W.; to lat. 32°32′06″ N., long. 84°41′25″ W.; to lat. 32°32′08″ N., long. 84°41′17″ W.; to lat. 32°32′15″ N., long. 84°41′01″ W.; to lat. 32°32′20″ N., long. 84°40′56″ W.; to lat. 32°32′07″ N., long. 84°40′44″ W.; to lat. 32°31′06″ N., long. 84°41′43″ W.; to lat. 32°31′04″ N., long. 84°40′54″ W.; to lat. 32°32′04″ N., long. 84°38′16″ W.; to lat. 32°29′16″ N., long. 84°38′17″ W.; to lat. 32°29′10″ N., long. 84°39′25″ W.; to lat. 32°18′35″ N., long. 84°39′30″ W.; to lat. 32°18′23″ N., long. 84°41′09″ W.; to lat. 32°19′03″ N., long. 84°41′42″ W.; thence along the Central of Georgia Railroad to lat. 32°19′09″ N., long. 84°42′27″ W.; to lat. 32°19′14″ N., long. 84°42′52″ W.; to lat. 32°19′23″ N., long. 84°43′18″ W.; to lat. 32°19′35″ N., long. 84°43′49″ W.; to lat. 32°19′43″ N., long. 84°44′29″ W.; to lat. 32°19′55″ N., long. 84°45′06″ W.; to lat. 32°20′13″ N., long. 84°45′54″ W.; to lat. 32°20′30″ N., long. 84°46′32″ W.; to lat. 32°20′53″ N., long. 84°46′55″ W.; to lat. 32°20′55″ N., long. 84°47′38″ W.; thence to the point of beginning.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

R–3002G Fort Benning, GA [New]

Boundaries. Beginning at lat. 32°20′15″ N., long. 84°58′36″ W.; to lat. 32°15′34″ N., long. 84°53′11″ W.; to lat. 32°15′32″ N., long. 84°54′02″ W.; to lat. 32°15″04′ N., long. 84°55′24″ W.; to lat. 32°14′27″ N., long. 84°54′50″ W.; to lat. 32°14′25″ N., long. 84°56′53″ W.; to lat. 32°14′36″ N., long. 84°56′53″ W.; to lat. 32°14′38″ N., long. 84°57′56″ W.; to lat. 32°16′36″ N., long. 84°57′58″ W.; to lat. 32°16′36″ N., long. 84°58′35″ W.; to lat. 32°17′39″ N., long. 84°58′35″ W.; to lat. 32°17′40″ N., long. 84°58′54″ W.; thence to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. Intermittent, 0600–0200 local time daily; other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Atlanta TRACON.

Using agency. U.S. Army, Commanding General, Infantry Center and Fort Benning, GA.

* * * * *

Issued in Washington, DC, on April 25, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–4186 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30491; Amdt. No. 3164]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 4, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. The National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on April 21, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 08 June 2006*

Decatur, AL, Pryor Field Rgnl, RNAV (GPS) RWY 18, Orig
Decatur, AL, Pryor Field Rgnl, VOR RWY 18, Amdt 13
Decatur, AL, Pryor Field Rgnl, GPS RWY 18, Orig-A, CANCELLED
Decatur, AL, Pryor Field Rgnl, Takeoff Minimums and Textual DP, Amdt 1
Big Lake, AK, Big Lake, Takeoff Minimums and Textual DP, Amdt 1
Mountain Village, AK, Mountain Village, RNAV (GPS) RWY 2, Orig
Mountain Village, AK, Mountain Village, RNAV (GPS) RWY 20, Orig
Mountain Village, AK, Mountain Village, GPS RWY 2, Orig-B, CANCELLED
Mountain Village, AK, Mountain Village, GPS RWY 20, Orig-B, CANCELLED
Mountain Village, AK, Mountain Village, Takeoff Minimums and Textual DP, Orig
Sand Point, AK, Sand Point, RNAV (GPS) RWY 13, Orig
Sand Point, AK, Sand Point, NDB RWY 13, Amdt 1
Sand Point, AK, Sand Point, NDB/DME RWY 13, Orig
Sand Point, AK, Sand Point, NDB/DME RWY 31, Orig
Sand Point, AK, Sand Point, GPS–C, Orig, CANCELLED
Sand Point, AK, Sand Point, NDB/DME–A, Amdt 4, CANCELLED
Sand Point, AK, Sand Point, NDB/DME–B, Orig, CANCELLED
Sand Point, AK, Sand Point, DF–A, Amdt 1, CANCELLED

Sand Point, AK, Sand Point, DF RWY 13, Orig
Sand Point, AK, Sand Point, Takeoff Minimums and Textual DP, Amdt 2
St Mary's, AK, St Mary's, RNAV (GPS) RWY 17, Amdt 1
St Mary's, AK, St Mary's, RNAV (GPS) RWY 35, Orig
St Mary's, AK, St Mary's, GPS RWY 34, Orig-A, CANCELLED
St Mary's, AK, St Mary's, LOC/DME RWY 17, Amdt 3
St Mary's, AK, St Mary's, DF RWY 6, Amdt 1
Mountain Home, AR, Ozark Regional, LOC/DME RWY 5, Orig
Arcata/Eureka, CA, Arcata, Takeoff Minimums and Textual DP, Amdt 6
Eagle, CO, Eagle County Regional, LDA/DME RWY 25, Orig
Eagle, CO, Eagle County Regional, LOC/DME–C, Amdt 2B, CANCELLED
Eagle, CO, Eagle County Regional, LOC–B, Amdt 1C, CANCELLED
New Haven, CT, Tweed-New Haven, VOR–A, Amdt 3
New Haven, CT, Tweed-New Haven, VOR RWY 2, Amdt 23
New Haven, CT, Tweed-New Haven, ILS OR LOC RWY 2, Amdt 16
New Haven, CT, Tweed-New Haven, RNAV (GPS) RWY 2, Orig
Deland, FL, Deland Muni-Sidney H. Taylor Field, RNAV (GPS) RWY 23, Orig
Deland, FL, Deland Muni-Sidney H. Taylor Field, VOR RWY 23, Amdt 3
Key West, FL, Key West Intl, RNAV (GPS) RWY 9, Orig
Key West, FL, Key West Intl, RNAV (GPS) RWY 27, Orig
Key West, FL, Key West Intl, GPS RWY 9, Orig-B, CANCELLED
Key West, FL, Key West Intl, GPS RWY 27, Orig-B, CANCELLED
Key West, FL, Key West Intl, Takeoff Minimums and Textual DP, Amdt 1
Miami, FL, Kendall-Tamiami Executive, RNAV (GPS) RWY 9R, Orig
Miami, FL, Kendall-Tamiami Executive, NDB OR GPS RWY 9R, Amdt 1B, CANCELLED
Miami, FL, Kendall-Tamiami Executive, ILS OR LOC RWY 9R, Amdt 9
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, Takeoff Minimums and Textual DP, Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 10, Orig, ILS RWY 10 (CAT II) ILS RWY 10 (CAT III)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 28, Orig, ILS RWY 28 (CAT II) ILS RWY 28 (CAT III)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 8R, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 8L, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 9L, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 9R, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 26L, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 26R, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 27R, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) RWY 27L, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 8R, Amdt 59
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 8L, Amdt 3, ILS RWY 8L (CAT II) ILS RWY 8L (CAT III)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 9L, Amdt 8
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 9R, Amdt 17, ILS RWY 9R (CAT II) ILS RWY 9R (CAT III)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 26L, Amdt 19
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 26R, Amdt 4
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 27L, Amdt 15
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 18, Amdt 1
Moline, IL, Quad City, RADAR–1, Amdt 8, CANCELLED
Peoria, IL, Greater Peoria Regional, RADAR–1, Amdt 12C, CANCELLED
Gary, IN, Gary/Chicago Intl, RNAV (RNP) RWY 30, Orig
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 16, Amdt 1
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 34, Amdt 1
Wellington, KS, Wellington Muni, RNAV (GPS) RWY 17, Orig
Wellington, KS, Wellington Muni, RNAV (GPS) RWY 35, Orig
Wellington, KS, Wellington Muni, NDB RWY 17, Amdt 5
Wellington, KS, Wellington Muni, NDB RWY 35, Orig
Wellington, KS, Wellington Muni, VOR/DME RWY 17, Amdt 2
Elizabethtown, KY, Addington Field, RNAV (GPS) RWY 5, Orig
Elizabethtown, KY, Addington Field, RNAV (GPS) RWY 23, Orig
Elizabethtown, KY, Addington Field, VOR/DME RNAV OR GPS RWY 5, Amdt 2, CANCELLED
Elizabethtown, KY, Addington Field, VOR–A, Amdt 3
Elizabethtown, KY, Addington Field, Takeoff Minimums and Textual DP, Amdt 1
Hammond, LA, Hammond Northshore Regional, RNAV (GPS) RWY 18, Orig
Hammond, LA, Hammond Northshore Regional, RNAV (GPS) RWY 31, Orig
Hammond, LA, Hammond Northshore Regional, ILS OR LOC RWY 18, Amdt 3
Hammond, LA, Hammond Northshore Regional, VOR RWY 18, Amdt 3
Hammond, LA, Hammond Northshore Regional, GPS RWY 31, Orig-B, CANCELLED
Bedford, MA, Laurence G. Hanscom Field, ILS OR LOC RWY 29, Amdt 6
Bedford, MA, Laurence G. Hanscom Field, RNAV (GPS) RWY 23, Orig
Bedford, MA, Laurence G. Hanscom Field, GPS RWY 23, Orig-B, CANCELLED
Bedford, MA, Laurence G. Hanscom Field, Takeoff Minimums and Textual DP, Amdt 3
Frederick, MD, Frederick Muni, RNAV (GPS) RWY 5, Orig
Frederick, MD, Frederick Muni, GPS RWY 5, Amdt 1A, CANCELLED
Bar Harbor, ME, Hancock County-Bar Harbor, LOC/DME BC RWY 4, Amdt 2
Bar Harbor, ME, Hancock County-Bar Harbor, RNAV (GPS) RWY 4, Orig
Bar Harbor, ME, Hancock County-Bar Harbor, GPS RWY 4, Orig, CANCELLED
Bar Harbor, ME, Hancock County-Bar Harbor, Takeoff Minimums and Textual DP, Amdt 4
Detroit, MI, Detroit Metropolitan/Wayne County, Takeoff Minimums and Textual DP, Orig
Kirksville, MO, Kirksville Regional, RNAV (GPS) RWY 36, Orig
Kirksville, MO, Kirksville Regional, RNAV (GPS) RWY 18, Orig
Kirksville, MO, Kirksville Regional, VOR/DME RNAV OR GPS RWY 36, Amdt 8A, CANCELLED
Kirksville, MO, Kirksville Regional, VOR/DME RNAV OR GPS RWY 18, Amdt 7A, CANCELLED
Meridian, MS, Key Field, RNAV (GPS) RWY 1, Orig
Meridian, MS, Key Field, RNAV (GPS) RWY 4, Orig
Meridian, MS, Key Field, RNAV (GPS) RWY 22, Orig
Meridian, MS, Key Field, GPS RWY 1, Orig, CANCELLED
Meridian, MS, Key Field, VOR–A, Amdt 16
Meridian, MS, Key Field, Takeoff Minimums and Textual DP, Amdt 4
Millville, NJ, Millville Muni, NDB RWY 14, Amdt 6
Millville, NJ, Millville Muni, VOR/DME RNAV OR GPS RWY 28, Amdt 1, CANCELLED
Millville, NJ, Millville Muni, VOR/DME RNAV OR GPS RWY 32, Amdt 1, CANCELLED
Millville, NJ, Millville Muni, RNAV (GPS) RWY 14, Orig
Millville, NJ, Millville Muni, RNAV (GPS) RWY 28, Orig
Millville, NJ, Millville Muni, RNAV (GPS) RWY 32, Orig
Millville, NJ, Millville Muni, Takeoff Minimums and Textual DP, Amdt 2
New York, NY, LaGuardia, RNAV (GPS) RWY 4, Amdt 1
New York, NY, LaGuardia, RNAV (GPS) RWY 13, Orig
New York, NY, LaGuardia, RNAV (GPS) RWY 22, Amdt 1
New York, NY, LaGuardia, RNAV (GPS) RWY 31, Orig-A
Cleveland, OH, Cleveland-Hopkins Intl, Takeoff Minimums and Textual DP, Amdt 14
Cleveland, OH, Cuyahoga County, Takeoff Minimums and Textual DP, Orig
Elyria, OH, Elyria, Takeoff Minimums and Textual DP, Amdt 2
Lorain/Elyria, OH, Lorain County Regional, Takeoff Minimums and Textual DP, Orig
Medina, OH, Medina Municipal, Takeoff Minimums and Textual DP, Amdt 3
Middlefield, OH, Geauga County, Takeoff Minimums and Textual DP, Amdt 3
Painesville, OH, Concord Airpark, Takeoff Minimums and Textual DP, Amdt 1
Willoughby, OH, Willoughby Lost Nation Muni, Takeoff Minimums and Textual DP, Amdt 2
La Grande, OR, La Grande/Union County, RNAV (GPS) RWY 16, Orig
La Grande, OR, La Grande/Union County, GPS RWY 16, Orig, CANCELLED
Suffolk, VA, Suffolk Executive, LOC RWY 4, Amdt 2

Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 4, Amdt 1
Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 7, Orig
Suffolk, VA, Suffolk Executive, GPS RWY 7, Orig-B, CANCELLED
Suffolk, VA, Suffolk Executive, Takeoff Minimums and Textual DP, Amdt 3
Oak Harbor, WA, Wes Lupien, RNAV (GPS) RWY 7, Orig-A
Oak Harbor, WA, Wes Lupien, RADAR–1, Orig
Laramie, WY, Laramie Regional, RNAV (GPS) RWY 12, Orig
Laramie, WY, Laramie Regional, RNAV (GPS) RWY 30, Orig
Laramie, WY, Laramie Regional, VOR/DME OR TACAN RWY 12, Amdt 6
Laramie, WY, Laramie Regional, VOR/DME OR TACAN RWY 30, Amdt 7

** * * Effective 03 August 2006*

Chickasha, OK, Chickasha Muni, NDB RWY 17, Amdt 1, CANCELLED
Washington, PA, Washington County, NDB RWY 27, Amdt 1, CANCELLED

[FR Doc. 06–4067 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 37 and 38

[Docket No. RM05–5–000; Order No. 676]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued April 25, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations under the Federal Power Act to incorporate by reference the following standards promulgated by the Wholesale Electric Quadrant of the North American Energy Standards Board: Business Practices for Open Access Same-Time Information Systems (OASIS); Business Practices for OASIS Standards and Communication Protocols; OASIS Data Dictionary; Coordinate Interchange; Area Control Error (ACE) Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback. Incorporating these standards by reference into the Commission's regulations will standardize utility business practices and transactional processes and OASIS procedures.

DATES: This Final Rule will become effective June 5, 2006. The incorporation by reference of certain standards listed in this Final Rule is approved by the Director of the **Federal Register** as of June 5, 2006. Public utilities must implement the standards adopted in this Final Rule by July 1, 2006, and must file revisions to their open access transmission tariffs (OATTs) to include these standards in accordance with the following schedule. On or after June 1, 2006, a public utility proposing OATT revisions unrelated to this rule is required to include the standards adopted in this Final Rule as part of that filing. (Prior to June 1, 2006, a public utility making OATT revisions unrelated to this rule has the option of including the standards adopted in this Final Rule as part of that filing.) As the standards adopted in this Final Rule must be implemented by July 1, 2006, the OATT revisions filed to comply with this rule are to include an effective date of July 1, 2006. Any requests for waiver of any of these standards must be filed on or before June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8292.

Kay Morice (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6507.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8321.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion
A. Business Practice Standards Complementing NERC Reliability Standards
1. Inadvertent Interchange Payback
2. Manual Time Error Correction
3. Coordinate Interchange
4. Definition of Terms
B. OASIS Business Practice Standards
1. Redirect Standard 001–9.7
2. Standard 001–10.6
3. Standard 002–4.2.10.2 and OASIS Data Dictionary
4. Standard 002–4.5
5. Standards of Conduct
C. Applicability, Waivers, and Variances
1. General Principles
2. Specific Issues
D. Other Issues
1. Cost Recovery
2. Fees for Obtaining NAESB–WEQ Standards
III. Implementation Dates and Procedures
IV. Notice of Use of Voluntary Consensus Standards
V. Information Collection Statement
VI. Environmental Analysis
VII. Regulatory Flexibility Act Certification
VIII. Document Availability
IX. Effective Date and Congressional Notification
Appendix—List of Commenters to Standards NOPR

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

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA)[1] to incorporate by reference certain standards promulgated by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These standards establish a set of business practice standards and communication protocols for the electric industry that will enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. The standards replace, with modifications, the Commission's existing Business Practice Standards for Open Access Same-Time Information Systems (OASIS) Transactions and OASIS Standards and Communication Protocols and Data Dictionary requirements. In addition, the standards include business practices to complement the North American Electric Reliability Council's (NERC) Version 0 reliability standards and ultimately the standards to be adopted by the Electric Reliability Organization (ERO) pursuant to Order Nos. 672 and 672–A.[2] Adopting these standards will establish a formal ongoing process for reviewing and upgrading the Commission's OASIS standards as well as adopting other electric industry business practice standards.

I. Background

2. When the Commission developed its OASIS regulations, OASIS Standards and Communication Protocols, Data Dictionary, and OASIS Business Practice Standards, it relied heavily on the assistance provided by all segments of the wholesale electric power industry and its customers in the ad hoc working groups that came together and offered consensus proposals for the

[1] 16 U.S.C. 791a, *et seq.*

[2] *See* 18 CFR Part 39 Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8662 (corrected at 71 FR 11505), FERC Stats. & Regs. ¶ 31, 204, Order No. 672–A, 71 FR 19814 (2006), 114 FERC ¶ 61,328 (2006).

Commission's consideration.[3] While this process was very successful, it became apparent to the Commission that ongoing issues remained that would be better addressed by an ongoing industry group dedicated to drafting consensus industry standards to implement the Commission's OASIS-related policies as well as to complement policies on other industry business practices.

3. On December 19, 2001, the Commission issued an order asking the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry.[4]

4. Subsequently, in 2002, the Gas Industry Standards Board stepped forward and volunteered to play this role by modifying its organization to broaden the scope of its activities to address electric power standards. The result of this reorganization has been the emergence of NAESB's WEQ, a non-profit, industry-driven organization working to reach consensus on standards to streamline the business practices and transactional processes within the wholesale electric industry and proposing and adopting voluntary communication standards and model business practices.

5. The WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the five industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, and end users.[5]

6. The Commission also urged the industry to expeditiously establish the procedures for ensuring coordination between NERC and NAESB, and requested NAESB and others to file an update on the progress on coordination between it and NERC 90 days after the formation of the WEQ.[6] In response to the Commission's request, NAESB and NERC filed a joint letter, on December 16, 2002, explaining that they had signed a memorandum of understanding (MOU) ''designed to ensure that the development of wholesale electric business practices and reliability standards are harmonized and that every practicable effort is made to eliminate overlap and duplication of efforts between the two organizations.'' The MOU describes, among other coordination procedures, the establishment of a Joint Interface Committee (JIC) that will review all standards development proposals received by either organization and determine which organization should be assigned to draft the relevant standards.

7. On January 18, 2005, NAESB submitted a status report to the Commission detailing the WEQ's activities over the two years since the group's inception, and informed the Commission that it had adopted its first set of business practice and communication standards for the electric industry (Version 000). NAESB stated that these standards, in addition to adopting the Commission's existing OASIS standards, included improvements and revisions to: (1) Facilitate the redirection of transmission service; (2) address multiple submissions of identical transmission requests/queuing issues; (3) address OASIS posting requirements under Order No. 2003 (the Large Generator Interconnection rule);[7] and (4) provide non-substantive editing to improve the formatting, organization, and clarity of the text.

8. In its report, NAESB also informed the Commission that the WEQ adopted four business practice standards to complement NERC's Version 0 reliability standards.[8] NAESB stated that these business practice standards were developed as part of a joint effort with NERC in which the JIC divided the existing NERC operating policies into reliability standards for development by NERC and business practices standards for development by NAESB.

9. Further, NAESB stated that the WEQ had adopted business practice standards for Standards of Conduct to implement the Commission's requirements in Order Nos. 2004, 2004–A, and 2004–B.[9]

10. In response to NAESB's report, on May 9, 2005, the Commission issued a Notice of Proposed Rulemaking (Standards NOPR)[10] that proposed to incorporate by reference the following Version 000 standards developed by the WEQ: (1) Business Practices for Open Access Same-Time Information Systems (OASIS), with the exception of standards that duplicate the Commission's regulations; (2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols; and (3) an OASIS Data Dictionary. The Commission also proposed to incorporate by reference the WEQ's business practice standards on Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback. The Commission did not propose to incorporate by reference Standard 001–9.7 concerning redirects of transmission service,[11] because the standard was unclear and could be interpreted to conflict with provisions of the *pro forma* open access transmission tariff (OATT).[12] The Commission also did not propose to incorporate by reference the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) because they duplicate the

[3] *See Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, 61 FR 21737, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 at 31,588–9 (1996), Order No. 889–A, 62 FR 12484, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31, 049 (1997). *See Open Access Same-Time Information System and Standards of Conduct,* Order No. 638, 65 FR 17370, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,093 (2000).

[4] *See Electricity Market Design and Structure,* 97 FERC ¶ 61,289 (2001) (December 2001 Order), 99 FERC ¶ 61,171 (2002) (May 2002 Order), *reh'g denied,* 101 FERC ¶ 61,297 (December 2002 Order).

[5] Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the five industry segments. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

[6] May 2002 Order at P 22.

[7] *See Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 68 FR 49846, 68 FR 69599, FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932, FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004), *order on reh'g,* Order No. 2003–B, 70 FR 265, FERC Stats & Regs., Regulations Preambles ¶ 31,171 (2004), *order on rehearing,* Order No. 2003–C, 70 FR 37661, FERC & Stats. ¶ 31,190 (2005), *appeal pending sub nom. National Ass'n of Regulatory Commissioners* v. *FERC,* D.C. Cir. Nos. 04–1148, *et al.*

[8] These standards include: Coordinate Interchange; Area Control Error (ACE) Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback.

[9] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003) (Order No. 2004), *order on reh'g,* Order No. 2004–A, 69 FR 23562, FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004), *order on reh'g and clarification,* Order No. 2004–B, 69 FR 48371, FERC Stats. & Regs., Regulations Preambles ¶ 31,166 (2004), *order on reh'g and clarification,* Order No. 2004–C, 70 FR 284, FERC Stats. & Regs., Regulations Preambles ¶ 31,172 (2005), *order on reh'g and clarification,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. American Gas Association* v. *FERC,* D.C. Cir. No. 04–1178, *et al.* (filed June 9, 2004 and later).

[10] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 70 FR 28222 (May 17, 2005), FERC Stats. & Regs. ¶ 32,582 (2005).

[11] On November 16, 2005, NAESB filed a report notifying the Commission that the WEQ business practice standards had been renumbered for ease of reference and to ensure the uniqueness of the number, but the text of the standards had not been changed. References in this order are to the revised standard numbers.

[12] The Commission did, however, invite comment on this issue.

Commission's regulations on this subject.

11. Twenty-three comments were filed in response to the Standards NOPR.[13] These comments raise a number of issues concerning the relationship of the standards to reliability standards, the substance of specific standards, and the availability and process for obtaining regional variances and waivers of the standards.

II. Discussion

12. The Commission is pleased that the WEQ has begun the process of developing business practice and communication standards for the electric industry. Standardization of business practices and communication processes will benefit the electric industry by providing for uniform methods of doing business with different transmission providers. Many participants in electric markets conduct business transactions involving a number of different transmission providers and establishing a uniform set of procedures and communication protocols will help make such transactions more efficient. Moreover, having the industry consider business practice standards through a consensus process may result in the industry devising ways to improve and make business practices more efficient.

13. The Version 000 standards adopted by the WEQ establish the baseline upon which future wholesale electric business practice standards can be built. The WEQ has, for example, adopted the existing Commission OASIS standards, but significantly has modified these standards to provide customers with greater flexibility.

14. The WEQ also adopted business practice standards that complement NERC's Version 0 reliability standards. The development of such standards will be of increasing importance in the future as the Commission approves reliability standards under the recently enacted Energy Policy Act of 2005 (EPAct 2005).[14] Business practice and reliability standards must complement each other to support an efficient grid. Companies need to have means of conducting business that ensure compliance with the reliability standards. We, therefore, are pleased NERC and NAESB have developed operating protocols that synchronize their standards development to provide for efficient and coordinated implementation of their respective standards.

15. In addition, since the electric industry relies heavily on natural gas as a fuel source, it is becoming increasingly important for the business practices and communication protocols of these industries to work together efficiently. Because NAESB develops business practice and communication standards for the wholesale and retail natural gas and electric industries, NAESB standards will enable participants in these industries to better coordinate their activities and improve their communications.[15]

16. Nonetheless, while standardization of business practice and communication standards will promote efficient transactions, we recognize that different regions may conduct business differently and regional variations may be needed. The WEQ standards we adopt in this order include standards recognizing such regional differences. Similarly, transmission providers use different business models. For example, independent system operators (ISOs), regional transmission organizations (RTOs), and traditional vertically integrated public utilities conduct business in very different ways, and the WEQ standards will need to recognize such differences.

17. A number of parties have raised issues with respect to the applicability of certain WEQ standards to specific circumstances. In the future, we would encourage all industry participants to raise such issues during the standard development process so that all industry segments can determine whether a particular standard should recognize such differences. This process may resolve requests before they reach the Commission. Even if the request is not satisfactorily resolved by the WEQ, the process will help create a record should the requester seek a variance or waiver when the standard is presented to the Commission.

18. We recognize that with respect to the standards being incorporated in this Final Rule, parties cannot seek review of their issues at the WEQ prior to implementation. Rather than seek to resolve these specific issues in a generic proceeding, we are establishing a process for those parties to file requests for waiver with respect to particular standards prior to implementation of this Final Rule.

19. The specific standards developed by the WEQ that we are incorporating by reference in this Final Rule are as follows:

- Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 001–0.2 through 001–0.8, 001–2.0 through 001–9.6.2, 001–9.8 through 001–10.8.6, and Examples 001–8.3–A, 001–9.2–A, 001–10.2–A, 001–9.3–A, 001–10.3–A, 001–9.4.1–A, 001–10.4.1–A, 001–9.4.2–A, 001–10.4.2–A, 001–9.5–A, 001–10.5–A, 001–9.5.1–A, and 001–10.5.1–A;
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 002–1 through 002–5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standard 003–0;
- Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 004–0 through 004–13, and 004–A through 004–D;
- Area Control Error (ACE) Equation Special Cases Standards (WEQ–005, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 005–0 through 005–3.1.3, and 005–A;
- Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 006–0 through 006–12; and
- Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 007–0 through 007–2, and 007–A.

20. The Commission will also require public utilities to modify their OATTs to include the WEQ standards that we are incorporating by reference, the next time they make any unrelated filing to revise their OATTs. We also clarify that, to the extent that a public utility's OASIS obligations are administered by an ISO or RTO and are not covered in its OATT, the public utility will not need to modify its OATT to meet these particular requirements.

[13] The Appendix provides a list of the comments received and the abbreviations used to refer to individual commenters in this rule.

[14] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), 42 U.S.C. 15801 *et seq.* *See* Order Nos. 672 and 672–A.

[15] Indeed, NAESB already has developed business practice standards to enable the wholesale gas and electric industries to communicate more effectively. *See* NAESB reports in Docket Nos. RM05–28–000, RM96–1–027, and RM05–5–001, where NAESB submitted to the Commission business practice standards it had adopted for the wholesale gas and electric industries (filed on June 27 and 28, 2005).

21. We will address below the issues raised in the comments on the standards.

A. Business Practice Standards Complementing NERC Reliability Standards

22. As explained above, when NAESB's WEQ was formed, NERC and NAESB signed an MOU that set up the JIC.[16] The MOU was subsequently amended to include participation by the ISO/RTO Council.[17] Among other duties, the JIC determines whether a proposed standard is a reliability standard to be developed by NERC or is a business practice standard to be developed by NAESB.

23. The JIC unanimously approved the drafting committee's determination that certain standards be developed as business practice standards by NAESB. Among them were: Coordinate Interchange; ACE Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback.[18] These standards previously had been part of NERC's policy statements, which included both reliability and commercial components. The translation of the reliability and commercial components of the existing NERC policy statements into standards resulted in the NERC Version 0 reliability standards dealing with the reliability component and the complementary WEQ Version 000 business practice standards dealing with the commercial component. Any changes that were required to bring the standards up to date were to be made in subsequent Version 1 standards.[19]

Comments

24. NERC and other commenters[20] supporting NERC's position, requested that the Commission defer action on three of the WEQ standards designed to complement NERC's Version 0 reliability standards, so that these standards could be developed as reliability standards by NERC.[21] Other commenters expressed confidence that NERC and NAESB could resolve any differences.[22]

25. Subsequently, NERC and NAESB have resolved this issue. In comments filed on February 21, 2006, by NERC and on February 17, 2006 by NAESB, they report that NERC is withdrawing its request to the Commission to defer action on the three standards, and NERC states that the three standards complement and are consistent with the existing NERC Version 0 reliability standards.[23] In addition, NERC and NAESB inform the Commission that they are in the process of finalizing new procedures for coordinating the development of standards in areas that affect both reliability and business practices. The new approach will allow reliability standards to be developed under the NERC process and business practices to be developed under the NAESB process, while the actual development work will be done by a joint team sponsored by NERC and NAESB.

Commission Conclusion

26. The Commission is pleased that NERC and NAESB have reached agreement on how to deal with the three standards[24] and commends their efforts to develop an improved process for standards development. The Commission agrees that appropriate classification of standards between reliability and business practices is important, because the statutory procedures under which the Commission adopts business practice and reliability standards differ significantly. An improved process by NERC and NAESB for standards development should form a firm foundation for ensuring that standards in these two important areas are properly developed, classified, and coordinated so that the grid can run efficiently. We look forward to hearing that the parties have finalized their process.

27. The Commission incorporates by reference the four NAESB standards complementing NERC reliability standards: Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback. We address below issues raised in comments with respect to some of the standards.

1. Inadvertent Interchange Payback

28. The Inadvertent Interchange Payback standards define the methods by which energy imbalances between Balancing Authorities can be repaid. Inadvertent Interchange occurs when a Balancing Authority is not able to fully balance generation and load within its area. The standards permit Balancing Authorities to repay imbalances though bilateral in-kind payback, unilateral in-kind payback, or ''other payback methods,'' *e.g.*, through financial payments.

Comments

29. In its February 17, 2006 comments, NAESB informs the Commission that based on the report of its Inadvertent Interchange Payback Task Force (Task Force), it does not recommend any additional changes to the commercial business practices for inadvertent interchange payback at this time. The Task Force report recognized that significant effort was expended by NAESB and its member organizations to develop an Inadvertent Interchange settlement standard that would mitigate the potential financial gain that misuse of the payback-in-kind methodology might create. However, a majority of the Task Force members determined that, at this time, no consensus regarding any proposed solutions considered by the task force could gain approval. Each of the proposed solutions considered had one or more significant implementation hurdles to overcome, including but not limited to: data acquisition and integrity; pricing; credit; funding; and 100 percent participation of the affected interconnection.

30. TAPS claims that the proposed business practice continues the current practice of ''return-in-kind'' payment for inadvertent energy exchange between Balancing Authorities/control areas, while non-control areas remain subject to a $100/MWh charge for energy imbalance. TAPS argues that this treatment of non-control areas is discriminatory compared to the treatment of control area imbalances.[25]

Commission Conclusion

31. We are adopting the WEQ business practice standards (Standard WEQ–007) because they follow a long-standing industry practice for repaying imbalances between Balancing Authorities. TAPS does not claim that

[16] Memorandum of Understanding between North American Energy Standards Board and North American Electric Reliability Council, dated November 30, 2002 and filed in Docket No. RM01–12 on December 16, 2002.

[17] The ISO/RTO Council is comprised of the nine ISOs and RTOs in North America, including: Alberta Electric System Operator; California Independent System Operator Corporation; the Independent Electricity System of Ontario; ISO New England, Inc.; Midwest Independent Transmission System Operator, Inc.; New York Independent System Operator, Inc.; PJM Interconnection, LLC; the Electric Reliability Council of Texas (ERCOT); and the Southwest Power Pool.

[18] *See* NAESB Report on WEQ Business Practices, filed with the Commission on January 18, 2005, at 25–26.

[19] *Id.* at 2.

[20] Bonneville, CAISO, EEI, ISO/RTO Council, LADWP, Midwest ISO, NY Transmission Owners, and Southern Companies.

[21] ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback standards.

[22] EEI, FirstEnergy, and Exelon.

[23] NERC Supplementary Comments at 1.

[24] The three standards are: Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

[25] TAPS at 3–4.

return-in-kind payback should not be used by Balancing Authorities/control area; it contends only that it is discriminatory to limit this approach to Balancing Authorities. TAPS has raised the same issue in the Commission's rulemaking in RM05–25–000, where the Commission has issued a notice of inquiry to consider reforms to the Order No. 888 *pro forma* OATT and the OATTs of public utilities.[26] We find the issue of whether non-control areas should be allowed in-kind payback, as raised by TAPS, is more appropriately considered in the rulemaking in RM05–25–000, and we will address it there.

32. We are concerned that, as reported by NAESB, the existing Inadvertent Interchange Payback standards are susceptible to abuse for financial gain, particularly if such abuse can lead Balancing Authorities to create imbalances that may jeopardize reliability. We urge NERC and NAESB to continue to work cooperatively to revise these standards to ensure that Inadvertent Interchange Payback cannot be abused and that reliability is not jeopardized by such actions. We emphasize that these standards refer only to *inadvertent* interchange, not to advertent actions, and that the Commission does not condone abusive actions taken by any party. The Commission retains authority under section 206 of the FPA to take actions in the event of such abuse.[27]

2. Manual Time Error Correction

33. The Manual Time Error Correction standards specify the procedure to be used for reducing a time error. The need for manual time error correction stems from the inability of Balancing Authorities to perfectly balance generation and load. The frequency of the Interconnection is normally scheduled to 60.00 Hz and Balancing Authorities attempt to balance generation and load in order to meet this objective. However, the balancing function is imperfect and over time the frequency will average slightly above or below 60.00 Hz resulting in mechanical electric clocks developing an error relative to true time.[28]

Comments

34. Bonneville and EEI claim that the chart on the second page of the Manual Time Error Correction standards (Standard 006–5) does not reflect a NERC waiver setting the Western Electricity Coordinating Council (WECC) initiation of manual time error as plus or minus five seconds instead of two seconds.[29]

Commission Conclusion

35. We will accept the WEQ's Manual Time Error standard (Standard WEQ–006). As to the concerns raised by the commenters, the waiver expired on February 8, 2004.[30] If a different timing requirement is needed by the WECC, the WECC or its members may seek such a change from the WEQ and, while that change is pending, request a waiver from the Commission allowing deviations from the requirements of the chart in Standard 006–5 in appropriate circumstances.

3. Coordinate Interchange

36. The Coordinate Interchange standards define procedures for market participants to request implementation of transactions crossing one or more Balancing Authority boundaries.

Comment

37. The ISO/RTO Council states that Appendix A of the Coordinate Interchange standards (Standard 004–A), dealing with interchange transactions from the Eastern Interconnection through the Southwest Power Pool (SPP) to ERCOT, is out of date. The ISO/RTO Council states that certain provisions of SPP's tariff recently have been changed and the Coordinate Interchange standards should be revised accordingly.

Commission Conclusion

38. We expect that, given the ever changing nature of the industry, the WEQ will revise its standards when appropriate.[31] In fact, the WEQ is already in the process of revising the Coordinate Interchange standards, including Appendix A.[32] We encourage the ISO/RTO Council to participate in the development of revised standards. In the meantime, we will accept the WEQ's Coordinate Interchange standards (Standard WEQ–004). The ISO/RTO Council, or its members, may request a waiver allowing deviations from the requirements of Appendix A in appropriate circumstances.

4. Definition of Terms

Comments

39. The ISO/RTO Council reports that the four NAESB standards define terms somewhat differently from the NERC definitions. The ISO/RTO Council would have NERC define reliability terms and NAESB use these definitions. In support of its argument, the ISO/RTO Council argues that operators should not have to understand more than one definition of the same item.[33]

Commission Conclusion

40. While we will accept the definitions associated with the four existing standards complementing NERC's Version 0 reliability standards so that these standards can be implemented, we agree with the ISO/RTO Council that in the future there should be a single definition of reliability terms. It is appropriate that NERC take the lead on defining these terms, as they are reliability-related, and that these same definitions be used by the WEQ in its standards. In future versions of the standards, NAESB should use the NERC definitions relating to reliability.

B. OASIS Business Practice Standards

1. Redirect Standard 001–9.7

41. The WEQ adopted standards intended to facilitate the redirect of transmission services. In the Standards NOPR, the Commission expressed concerns, and requested comment, about Standard 001–9.7 in relation to the policies the Commission has adopted in the *pro forma* OATT. Standard 001–9.7 states:

42. Unless otherwise mutually agreed to by the primary provider and original customer, a request for Redirect on a Firm basis does not impact the [Transmission Customer's] long term firm renewal rights (*e.g.*, rollover or evergreen rights) on the original path, nor does it confer any renewal rights on the redirected path.

43. In the Standards NOPR, the Commission expressed concern about how to interpret this standard in light of the rollover rights as defined in the *pro forma* OATT. The Commission requested comment on whether, if it determines that this standard is in conflict with its policies, there is an immediate need for a standard on this issue or whether the Commission can

[26] *Preventing Undue Discrimination and Preference in Transmission Services*, Notice of Inquiry, 70 FR 55796 (2005).

[27] *Southern California Edison Co.* v. *FERC*, 172 F.3d 74 (D.C. Cir. 1999).

[28] True time refers to the time maintained by the National Institute of Standards and Technology (NIST) in Boulder, Colorado.

[29] Bonneville at 7 and EEI at 4.

[30] *See* NERC Operating Committee letter issued on August 8, 2003 granting a waiver request on Western Interconnection thresholds to initiate manual corrections for time error.

[31] *See Standards for Business Practices of Interstate Natural Gas Pipelines*; Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs., Regulations Preambles ¶ 31,038, at 30,060 (Jul. 17, 1996) (''standards development is not like a sculptor forever casting his creation in bronze, but like a jazz musician who takes a theme and constantly revises, enhances, and reworks it'').

[32] *See* WEQ request for comments at *http://www.naesb.org/pdf2/weq_cibp010506req_com.doc.*

[33] IRC at 12–13.

wait for the WEQ to reconsider this issue and develop alternate language.

Comments

44. NAESB states that, during the deliberations on Standard 001–9.7, there was a concern that in some instances a transmission customer may wish to retain all rollover rights under an existing service agreement yet still request service over alternate points of receipt or delivery. Because of these issues, the WEQ determined that there may be circumstances with respect to redirects on a firm basis where the parties may mutually agree as to the disposition of rollover rights. NAESB states that it will develop alternate language, if the Commission determines that this standard conflicts with its policy.[34]

45. Bonneville asserts that Standard 001–9.7 can be read in harmony with the *pro forma* OATT and urges the Commission to adopt Standard 001–9.7 with one suggested modification. According to Bonneville, the Commission has stated that the redirect requestor retains the reservation priority rights afforded by section 2.2 of the *pro forma* OATT on the parent (or original) path. In the Standards NOPR, Bonneville contends, the Commission has suggested that the redirect requestor holds section 2.2 rights on both the parent path and the redirect path. Bonneville argues that, if this is allowed, a redirect requestor could encumber the future available transmission capability (ATC) of two paths for the price of one. It argues that the practical impact of requiring section 2.2 rights on both paths is that firm redirects will not be granted. Bonneville agrees with NAESB that rollover should not be given to the redirect request. However, Bonneville would create an exception when a long-term firm redirect reservation terminates when the service agreement terminates. Then Bonneville recommends moving the reservation priority from the original request path to the redirect request path and initiating a contract amendment for this type of redirect, thus allowing for contract modification on a firm basis with all the rights that flow with the service agreement. Bonneville contends that this approach will allow the redirect requestor to choose which path it values most, releasing the other path to new entrants.[35]

46. Southern Companies contends that a request by a transmission customer to redirect service on a firm basis does not change that customer's rollover rights on the original path and does not confer rollover rights on the redirected path. However, Southern Companies argues that transmission providers and transmission customers should have the ability to mutually agree to change the rollover rights from the original path to the redirected path if both parties find this beneficial. Southern Companies believes that Standard 001–9.7 allows for this flexibility.[36]

47. On the other hand, Cinergy shares the Commission's concern in the Standards NOPR that Standard 001–9.7 does not appear to be consistent with the *pro forma* OATT. Accordingly, Cinergy does not support its adoption. Cinergy contends that requests for redirect transmission service should be treated as a new transmission service request and the customer should be able to indicate whether any rollover rights are requested on the new path. If the remaining term of service on the original path with long-term firm rights is requested on the redirected path, the customer should be able to request rollover rights on the redirected path at the time of the request. If the redirected request is approved, the rollover rights on the existing path should terminate for the amount of service being redirected on a long-term firm basis.[37]

48. Likewise, Exelon argues that Standard 001–9.7 not be adopted for the reasons stated in the Standards NOPR. In Exelon's view, Standard 001–9.7 would permit a customer to relinquish rollover rights, contrary to the Commission's policy that transmission customers should not be permitted to contract away rollover rights because transmission owners could unfairly induce customers to give up their rollover rights.

49. Exelon also opposes adoption of Standard 001–9.7 because it would change the present Commission policy that allows rollover rights on a redirect of transmission. Exelon interprets Standard 001–9.7 to provide that a customer who is granted transmission on a new path would have to forego rollover rights on that new path. Exelon agrees with the Commission that rollover rights should be transferred to the new path. Exelon also states that Standard 001–9.7 begs the question of what would be the effect of a ''request'' for redirected service. Exelon believes that acceptance and confirmation by the transmission provider are necessary to grant the right for redirected service, but Standard 001–9.7 does not make that clear.[38]

50. The Midwest ISO believes that there is no immediate need to change the Commission's policy on redirect service and rollover rights and that the WEQ should be given a further opportunity to discuss with the industry any departure from the Commission's policy on rollover rights.[39]

Commission Conclusion

51. Standard 001–9.7 does not specify clearly the parties' responsibilities with respect to the ability of a customer requesting a firm redirect to obtain rollover rights on the redirect path.[40] Under section 22.2 of the *pro forma* OATT, a request for a firm redirect is like a request for new transmission service. The transmission provider, therefore, is required to offer rollover rights to a customer requesting a firm redirect if rollover rights are available on the redirect path. However, the transmission provider may not operationally be able to offer rollover rights on the requested redirect path due to reasonably forecasted native load needs for the transmission capacity.

52. Standard 001–9.7 provides that ''unless otherwise mutually agreed to by the primary provider and original customer, *a request for a Redirect on a Firm basis * * * [does not] confer any renewal rights on the redirect path.*'' (Emphasis added). This phrase could be interpreted to mean that the parties to an agreement may mutually agree to eliminate rollover rights and that a transmission provider may agree, but is not obligated, to offer rollover rights on the redirect path even when such rights are available. These provisions are inconsistent with the *pro forma* OATT and the Commission's policies. In addition, the last phrase of the standard also conflicts with the last sentence of section 22.2 of the *pro forma* OATT, which is limited to the period while the new request for service is pending. Therefore, we will not adopt Standard 001–9.7 at this time, but will allow the WEQ to reconsider the standard and to adopt a revised standard consistent with the Commission's policies.

53. The comments on this issue show that there is confusion in the industry regarding the provisions of sections 22.1 and 22.2 of the *pro forma* OATT. To assist the WEQ in developing a standard

[34] NAESB at 1–2.

[35] Bonneville at 2–5.

[36] Southern Companies at 1–2.

[37] Cinergy at 3–4.

[38] Exelon at 2–3.

[39] Midwest ISO at 3–4.

[40] Standard 001–9.7 appears consistent with section 22.2 of the existing *pro forma* OATT insofar as it provides that a customer requesting a firm redirect does not relinquish its rollover rights over its primary path simply by making the request.

that is consistent with the Commission's policy, we offer the following guidance.

54. Section 22 of the *pro forma* OATT addresses changes in service specifications. Section 22.1 pertains to modifications on a *non-firm* basis and section 22.2 covers modifications on a *firm* basis. Under section 22.1, a *firm* point-to-point transmission customer may request *non-firm* transmission service at secondary receipt and delivery points (points other than those specified in the service agreement). Section 22.1(c) provides that the transmission customer shall retain its right to schedule firm point-to-point transmission service at the receipt and delivery points specified in its relevant service agreement in the amount of its original capacity reservation.

55. Under section 22.2, any request by a transmission customer to modify receipt and delivery points on a *firm* basis is treated as a new request for service. This section also provides that, ''*[w]hile such new request is pending,* the Transmission Customer shall retain its priority for service at the existing *firm* Receipt and Delivery Points specified in its Service Agreement'' (emphasis added). Once the new request is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points, including rollover rights associated with the original path.

56. Bonneville asserts that the Commission has stated that the redirect requestor retains section 2.2 reservation priority rights on its original path.[41] Under section 22.1(c), which pertains to redirects on a *non-firm* basis, the transmission customer retains its right to schedule firm point-to-point service on its original path. This means that the transmission customer retains its original rights on its original path including its rollover rights on its original path and the requestor does not obtain new rollover rights on the redirected path. However, there is no similar provision in section 22.2 for redirects on a *firm* basis.[42]

57. Southern Companies argues that a request by a transmission customer to redirect service on a firm basis cannot change that customer's rollover rights on the original path and does not confer rollover rights on the redirected path. We disagree. Section 22.2 provides that, while a transmission customer's request for new service on a firm basis is *pending*, the transmission customer retains its priority for service on its existing path, including rollover rights on its existing path. However, once a transmission customer's request for firm transmission service at new receipt and delivery points is accepted and confirmed, the new reservation governs the rights at the new receipt and delivery points and the transmission customer can obtain rollover rights with respect to the redirected capacity. In addition, at the time the transmission customer's request for the redirected capacity is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points, including rollover rights associated with the original path.

58. As part of its process of review, NAESB identified several questions that were raised regarding rollover rights under the *pro forma* OATT during members' deliberations on Standard 001–9.7. These questions generally raised issues with respect to whether customers retain rollover rights on both the original and the redirected path.

59. A long-term firm transmission customer may request multiple, successive redirects and, as provided in section 22.2 of the *pro forma* OATT, each such successive request is treated as a new request for service in accordance with section 17 of the *pro forma* OATT. As a new request for service, each request is subject to the availability of capacity and subject to the possibility that the transmission provider may not be able to provide rollover rights on the new, redirected path. For example, assume a transmission customer with a one-year agreement for service between points A and B. If the transmission customer seeks to redirect on a firm basis in month 4 to points C to D and then redirect back to points A to B thereafter, at the end of the one year agreement the transmission customer would have rollover rights only with respect to points A to B.[43] With the same assumptions, if the transmission customer begins with points A to B, but redirects in month 4 to points C to D for the remainder of the one-year agreement, the transmission customer would have rollover rights only with respect to points C to D. If the transmission provider is unable to provide rollover rights on any redirected path, whether to points C to D or, thereafter, to points A to B, it would have to demonstrate at the time of the redirect request that it has native load growth or contracts that commence in the future that prevent it from providing rollover rights.[44]

60. If a transmission provider claims, either at the time of the original transmission request or at the time of a redirect request, that it is unable to provide rollover rights because it has native load growth or a contract that commences in the future, it must still offer transmission service for the time preceding the native load growth or commencement of the future contract. As explained above, however, it may limit rollover rights based on native load growth or contracts that commence in the future.

61. Further, if a transmission customer with a long-term firm transmission agreement requests to redirect on a firm basis for one month and then redirect on a firm basis back to its original receipt and delivery points for the remainder of the term of the agreement, such requests do not convert its existing long-term firm transmission service agreement into separate short-term transmission service agreements.[45] Under this scenario, the transmission customer has rollover rights for the original receipt and delivery points, because those are the points to which it has rights at the end of the agreement.

Standard 001–10.6

62. Standard 001–10.6 states:

> For the purposes of curtailment and other capacity reductions, confirmed Redirects on a Non-Firm basis shall be treated comparably to all other types of Non-Firm Secondary Point-to-Point Service.

63. In this standard, the phrase ''all other types'' is not defined. In the Standards NOPR, the Commission interpreted this phrase to apply only to services that are comparable to non-firm secondary point-to-point service, proposed to accept the standard based

[41] As explained in the notice of inquiry in Docket No. RM05–25–000, 70 FR 55796, FERC Stats. & Regs. ¶ 35,553 at P 18 (2005), section 2.2 of the *pro forma* OATT (Reservation Priority for Existing Firm Service Customers) provides that ''existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more) have the right to continue to take transmission service from the public utility transmission provider when the contract expires, rolls over or is renewed. It specifically provides that this transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the public utility transmission provider or elects to purchase capacity and energy from another supplier.''

[42] Bonneville at 2.

[43] The Commission assumes that a transmission customer would make the two requests to redirect to points C to D and then back to points A to B at the same time. Otherwise, the transmission customer would put itself at risk of not being able to redirect back to points A to B because of an intervening request for transmission service.

[44] *See, e.g., Tenaska Power Services Co. v. Southwest Power Pool, Inc.,* 99 FERC 61,344 (2002), *reh'g denied,* 102 FERC ¶ 61,140 at P 33, 38 (2003); *Nevada Power Company,* 97 FERC ¶ 61,324, at 62,492 (2001).

[45] *See, e.g., Commonwealth Edison Co.,* 95 FERC ¶ 61,027 (2001).

on this interpretation, and invited comments on this interpretation.

Comments

64. Cinergy, the Midwest ISO and NAESB support the Commission's interpretation of Standard 001–10.6 in the Standards NOPR. Cinergy also proposes that the WEQ consider revising the standard to read as follows:

> For the purposes of curtailment and other capacity reductions, confirmed Redirects on a Non-Firm basis shall be treated comparably to other Non-Firm Secondary Point-to-Point Service.[46]

Commission Conclusion

65. Since there is no disagreement with the Commission's interpretation of Standard 001–10.6 in the Standards NOPR, we will adopt this standard as proposed. We will allow the WEQ to determine whether this standard would be clearer if revised as Cinergy proposes.

3. Standard 002–4.2.10.2 and OASIS Data Dictionary

Comments

66. Bonneville states that the Commission's current OASIS Standards and Communication Protocols and OASIS Data Dictionary and the NAESB WEQ version of those documents contain some definition discrepancies, most likely due to editing errors during the reformatting process. It proposes four minor technical revisions to Standard 002–4.2.10.2, Status Value, for the status values for COUNTEROFFER, DECLINED, DISPLACED and REFUSED. In addition, Bonneville suggests that a data element ''ANNULLED'' be added to the OASIS Data Dictionary and that it be defined as ''assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided (Final State).''[47]

Commission Conclusion

67. Bonneville's request for the four technical revisions is moot. On March 25, 2005, the WEQ made the requested minor revisions to its January 15, 2005 standards. As to Bonneville's suggestion that a data element ''ANNULLED'' be added to the OASIS Data Dictionary, this definition is included in Standard 002–4.2.10.2, but is not currently included in the Commission's Data Dictionary. If Bonneville wishes to have this definition included in the OASIS Data Dictionary, it may submit a request to the WEQ to make such a change. In that way, the requested change will receive consideration by all industry segments before it is approved. If approved, the Commission will then have the opportunity to incorporate the change by reference in its regulations when the WEQ reports the next version of its standards to the Commission.

4. Standard 002–4.5

Comments

68. Bonneville and the ISO/RTO Council raise concerns about Standard 002–4.5, Information Supported by Web page, which states:

> When a regulatory order requires informational postings on OASIS and there is no OASIS [Standards and Communication Protocols] template to support the postings or it is deemed inappropriate to use a template, there shall be a reference in INFO.HTM to the required information, including, but not limited to, references to the following * * *
>
> For the purposes of this section, any link to required informational postings that can be accessed from INFO.HTM would be considered to have met the OASIS posting requirements, provided that the linked information meets all other OASIS accessibility requirements.

69. Bonneville contends that this standard requires the exclusive use of INFO.HTM. It argues that as long as postings are logically organized, user friendly and transparent to all users, exclusive use of INFO.HTM should not be mandated to provide links to the required informational postings.[48]

70. The ISO/RTO Council recommends that the Commission consider revising the standard to allow the information defined in Standard 002–4.5 to be posted on either the OASIS Main/Home page (as customers are accustomed to that posting) or INFO.HTM—rather than prescribing that they all must be on INFO.HTM. The ISO/RTO Council contends that very few OASIS sites use an INFO.HTM page. Thus, enforcing this requirement would be a new practice and would add confusion to the finding of such information, and may create duplicate links to the same information that would only lead to further confusion.[49]

Commission Conclusion

71. We do not interpret Standard 002–4.5 to mandate the exclusive use of INFO.HTM to provide links to required informational postings. While this standard requires certain information to be made available through a link from INFO.HTM, this does not preclude the posting of the same information elsewhere on OASIS, such as on the main or home page, as the ISO/RTO Council suggests, or, as Bonneville suggests, in a manner that is logically organized, user friendly and transparent to all users. Requiring informational postings to be available through a link from INFO.HTM provides for standardization and helps new users find the required information. At the same time, permitting links from other areas of OASIS allows flexibility.

5. Standards of Conduct

72. In the Standards NOPR, the Commission declined to propose adopting the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) because they duplicate, with some problematic revisions, the Commission's existing regulations codifying the Standards of Conduct, rather than implementing these standards.[50] In addition, the Commission stated that ''it would be useful if the WEQ would adopt standards comparable to those NAESB adopted regarding standards of conduct on the gas side.''[51]

Comments

73. APPA supported the Commission's proposal in the Standards NOPR not to incorporate duplicative standards.[52] NAESB stated that it would review the wholesale gas quadrant standards of conduct to prepare comparable standards for the wholesale electric quadrant which would amend the WEQ standards.[53]

Commission Conclusion

74. We will not incorporate by reference the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) since they duplicate the Commission's regulations. As explained above, the WEQ has offered to revise its standards of conduct to implement the Commission's standard of conduct regulations, rather than duplicate them. We look forward to reviewing this work product when it is completed.

C. Applicability, Waivers, and Variances

1. General Principles

75. The Commission proposed in the Standards NOPR to incorporate by reference in its regulations most of the standards adopted by the WEQ and to require that all public utilities revise their OATTs to include these standards. Some commenters question the applicability of the standards or possible waiver of the standards. These commenters raise issues concerning: (1)

[46] Cinergy at 4–5.

[47] Bonneville at 5–6.

[48] *Id.* at 5.

[49] ISO/RTO Council at 9.

[50] *See* 18 CFR 358.1–358.5.

[51] Standards NOPR at P 47.

[52] APPA at 2–3.

[53] NAESB at 1–2.

Possible variances for regional practices that may be inconsistent with the national standards; (2) waivers of certain standards for small entities or for ISOs and RTOs; and (3) whether non-public utilities (including Canadian entities) that participate in the wholesale electric power market can generally meet the open access reciprocity requirement established in Order Nos. 888 [54] and 889 without complying with these standards and whether they may apply for waivers of particular standards on a case-by-case basis.

76. The Commission recognizes, as it did in Order Nos. 888 and 889, that there is a need for regional variances and waivers. Certain regions may conduct business differently than other regions. The current WEQ standards recognize this. We also recognize that ISOs and RTOs operate using a business model for making transmission reservations to which certain OASIS and other standards may not be applicable.

77. In implementing the OASIS standards, the Commission has sought to determine whether compliance with a standard should be required of all public utilities or whether waivers or variances of those standards should be allowed. In some cases, the Commission has insisted on uniform national standards. For example, the Commission has required ISOs and RTOs to comply with naming standards for paths into, through and out of their territory, in order to facilitate moving power across the grid.[55]

78. Now that the WEQ is developing these standards, we prefer that initially all regional and other generic requests for variances, such as to accommodate different business models, be raised during the WEQ standards development process, and we encourage participation by all interested persons in that process.[56] The standards adopted by the WEQ recognize the need, in specific circumstances, for regional differences to be recognized in a national standard.[57] Having the WEQ consider requests for regional differences to be reflected in a specific business practice standard will allow all industry segments, at the outset, to determine whether the standard should recognize such differences. By first submitting the request to the WEQ during development of the standard, the request may be resolved during the WEQ process. Even if the request is not resolved by the WEQ, the process will help create a record should the requester seek a variance or waiver when the standard is presented to the Commission.

79. We recognize that with respect to the standards being incorporated in this rule, some commenters request specific waivers or variances of certain of the WEQ standards and they cannot seek review of their issues at the WEQ prior to implementation. We do not have a sufficient record to resolve such issues in this proceeding. Therefore, we will require each public utility that wants a waiver of any standard we are incorporating by reference in this Final Rule to file a request for waiver. In its request for waiver the public utility should explain that it is seeking the waiver under this Final Rule, citing the caption and docket number of this proceeding, and should identify the specific standard(s) for which it requests waiver and make its arguments as to why the waiver should be granted. Utilities, including ISOs and RTOs, that have existing waivers of certain OASIS standards may reapply for such waivers using the following simplified procedures. They should identify the specific standards from which they are seeking waivers and provide the caption, date and docket number of the proceeding in which they received the waiver and of this Final Rule and must certify that the circumstances warranting such waivers have not changed. Requests for waivers must be filed on or before June 1, 2006.

80. Moreover, the exemptions previously granted by the Commission will not be expanded to apply to the new WEQ OASIS standards dealing with redirects and multiple requests because it is not clear, at this point, that all public utilities that previously obtained waivers of the OASIS posting requirements will need waivers of these standards.

81. NY Transmission Owners argues that ISOs and RTOs should be allowed to upgrade from the minimally acceptable business practice required in a business practice standard. The business practice standards we are adopting here are minimum standards and all public utilities, including ISOs and RTOs, can provide customers with more flexibility than afforded by the standards. Such improvements must provide customers with increased flexibility, but should not affect customers' ability to utilize the standard procedure or adversely affect the rights of those not a party to the revision to meet the minimum standards criteria established.[58] Any such improvement would need to be filed with the Commission as a request to amend the public utility's OATT.

2. Specific Issues

a. Compliance by ISO/RTO Members

Comment

82. NY Transmission Owners asks that public utilities that are members of ISOs and RTOs not be required to revise their OATTs to incorporate the proposed OASIS standards, because the ISOs or RTOs operate their OASIS.

Commission Conclusion

83. We agree with NY Transmission Owners. A public utility whose OASIS is administered by an ISO or RTO may comply with the requirement to include the OASIS standards in its OATT by adding a provision to its OATT stating that the ISO or RTO will be performing these functions on its behalf.

b. Waivers for Small Entities

Comments

84. Several commenters [59] argue that small utilities that previously have obtained waivers from the Commission from compliance with the requirements of Order Nos. 888 and 889 should be granted an automatic waiver of the OASIS-related business practice

[54] *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,036 at 31,691 (1996), *order on reh'g*, Order No. 888 A, 62 FR 12274, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31048 (1997), *order on reh'g*, Order No. 888 B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888 C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[55] *See New York Independent System Operator, Inc.*, 94 FERC ¶ 61,215 (2001).

[56] NAESB has recognized the need for standards reflecting different business models. In developing standards for pipeline nominations, for example, NAESB recognized that pipelines used three different models for nominations, and it developed standards to fit each model.

[57] For example, the WEQ's standards on Coordinate Interchange, Manual Time Error Correction, and Inadvertent Interchange Payback each recognize regional differences.

[58] The same standard has been applied to judge improvements to NAESB standards for natural gas pipelines. *See* Order No. 587, 61 FR 39053 at 39062, FERC Stats. & Regs. Regulations Preambles ¶ 31,038 at 30,069. For example, a NAESB business practice standard requires pipelines to offer three intraday nominations. 18 CFR 284.12(a)(1)(ii) (2005). Some pipelines have improved upon this standard by offering hourly nominations, which the Commission accepted because they add additional intraday nomination times for the pipelines' customers, but do not prevent shippers from relying on the three intraday nomination times required by the standard. *See, e.g., Tennessee Gas Pipeline Company*, 104 FERC ¶ 61,063 at P 88 (2003); *Reliant Energy Gas Transmission Company*, 93 FERC ¶ 61,141 at 61,430 (2000), order on reh'g, 94 FERC ¶ 61,322 (2001).

[59] This argument is raised in comments filed by GCEC, Lockhart, and NRECA.

standards proposed to be incorporated by reference by the Standards NOPR. Moreover, to the extent that public utilities need to apply for a waiver of the OASIS-related business practice standards, TAPS requests that the Commission clarify that the waiver criteria provided in Order Nos. 888, 889, and 2004 should be applied to the pertinent WEQ standards, rather than the criteria in the two orders cited in the Standards NOPR,[60] which relate to the stricter standard for waivers under Order No. 2001.[61]

Commission Conclusion

85. We will extend to small entities (that the Commission previously granted waivers of the Commission's OASIS-related standards) a streamlined procedure for requesting waivers of the corresponding newly adopted OASIS-related standards, as long as the circumstances warranting such waivers remain unchanged. For small entities to obtain such a waiver, they must file a letter explaining that they are seeking a waiver under this Final Rule, citing the caption and docket number of this proceeding, and identifying the caption, date and docket number of the proceeding in which they received their waiver and certifying that the circumstances warranting such waivers have not changed. These waivers would not apply to newly created standards, including standards to: Facilitate redirects of transmission service; address multiple submissions of identical transmission requests and queuing issues; and address Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

86. We also note that, while the costs of creating a fully functional OASIS Web site may be beyond the resources of a small company, such a company could comply with the redirect standards without undue additional cost. Nevertheless, a small company that believes that compliance with a particular redirect or other business practice standards would cause it hardship may request a waiver of a particular standard for good cause. Such a request will be evaluated on a case-by-case basis. In its waiver request, the requesting entity should specifically reference the standard at issue, describe its problems in complying with the standard, and describe how the entity intends to process such transactions.

87. We agree with TAPS and clarify that the appropriate criteria governing waiver requests relating to OASIS-related business practice standards should be the applicable criteria regarding waivers under Order Nos. 888 and 889, which were laid out in *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*),[62] and in *Inland Power & Light Company,* 84 FERC ¶ 61,301 (1998) (*Inland P&L*) and for the Commission's Standards of Conduct under Order No. 2004,[63] which were laid out in *Bear Creek Storage Company*, 108 FERC ¶ 61,011 (2004) (*Bear Creek*), among other cases. In *Inland P&L*, the Commission explained that waiver of Order No. 889 is appropriate: (1) If the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility[64] that owns, operates, or controls an integrated transmission grid (unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver is not justified). The waiver would last until such time as the public utility receives a request for transmission service, at which time the public utility must file a *pro forma* OATT within 60 days.[65] Moreover, as the Commission explained in *Inland P&L*, the Commission has held, among other matters, that a waiver of Order No. 889 remains in effect until an entity evaluating its transmission needs finds that it needs the information not being reported (because of the waiver) and files a complaint on this subject with the Commission and the Commission takes action in response to the complaint.[66]

88. Finally, the Commission routinely processes requests for waivers and does not see a need to include a specific reference to waivers for non-public utilities in Part 38, as requested by NRECA. We will apply the same principles in granting waivers that the Commission established in *Inland P&L* and other relevant Commission cases.

c. Reciprocity for Canadian Entities

Comment

89. The ISO/RTO Council argues that requiring compliance with business practice standards by Canadian entities, which are non-jurisdictional, through the imposition of reciprocity conditions is not appropriate. It contends that the open access considerations underlying Order No. 888 should not be assumed to apply to the business practice standards. The ISO/RTO Council urges that, at a minimum, the Commission should defer consideration of this condition at this time, pending further review.[67]

Commission Conclusion

90. The Commission previously found that OASIS-related rules are necessary for reciprocity tariffs of non-jurisdictional entities unless an entity has shown that a waiver is justified. Canadian entities have not requested any generic changes to this policy.[68] Thus, at this time, we will retain our current policy. Canadian entities with reciprocity tariffs that need a waiver of particular standards may request such a waiver.

D. Other Issues

1. Cost Recovery

Comment

91. The Standards NOPR included an information collection statement that projected the annualized cost of complying with the proposals in the Standards NOPR and invited comments on this cost estimate. In response, FirstEnergy Companies states that it ''cannot comment on the estimated cost of compliance'' but requests that the Commission approve the recovery of the actual costs of compliance. FirstEnergy Companies argues that such cost recovery is warranted because compliance with the WEQ standards will be mandatory.[69]

Commission Conclusion

92. The Commission typically allows recovery in rates of prudently incurred costs to comply with standards such as those promulgated by the WEQ, and we

[60] *Bridger Valley Electric Association, Inc.,* 101 FERC ¶ 61,146 (2002) and *Sussex Rural Electric Cooperative*, 103 FERC ¶ 61,299 (2003).

[61] Unitil Companies argues, alternatively, that, if entities granted waivers under Order No. 889 are not eligible for waivers, then the Commission should clarify that waivers should not be limited to entities that fall within the Regulatory Flexibility Act (RFA) definition of ''small entities.'' As discussed below, entities granted waivers under Order No. 889 are eligible, upon a proper showing, for waivers of the OASIS-related standards adopted in this rule. Thus, we find Unitil Companies' alternative proposal to be moot.

[62] *See also* Order No. 638 at 31,451.

[63] Order No. 2004 states that transmission providers may request waivers or exemptions from all or some of the requirements of part 358 for good cause. *See* 18 CFR 358.1(d)(2005).

[64] To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility, *i.e.*, disposes of no more than four million Mwh annually.

[65] 84 FERC at 62,387.

[66] *Id.*

[67] ISO/RTO Council at 12.

[68] We note, however, that two Canadian entities, the Alberta Electric System Operator and the Independent Electricity System Operator of Ontario, are members of the ISO/RTO Council, which did file comments on this issue. We also note that some Canadian entities are members of NAESB and are represented in the standards development process and Canadian non-NAESB members, like their U.S. counterparts, may also participate in the NAESB process.

[69] FirstEnergy Companies at 4.

will make those determinations on a case-by-case basis.

2. Fees for Obtaining NAESB–WEQ Standards

93. In the Standards NOPR, the Commission explained that, in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Congress requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WEQ, as a means to carry out policy objectives or activities.[70] As the Commission has pointed out on several occasions,[71] incorporation by reference is the appropriate, and indeed the required, method for adopting copyrighted standards material.[72] The Standards NOPR also explained that, as required by the NTTAA, the WEQ standards are reasonably available from NAESB.

Comments

94. Three commenters oppose the proposal to allow NAESB to charge a fee to obtain its copyrighted materials. They argue that these materials should be made available at no charge. In particular, NEPOOL cautions against mandating compliance with standards that are only accessible to NAESB members, to those that pay a fee or to those that travel to the FERC Public Reference Room in Washington, DC, and that carry licensing restrictions. NEPOOL argues that these accessibility concerns extend not only to all the public utilities that will be affected by any final rule in this proceeding, but also to all customers of transmission services that need to review them.

95. Similarly, IRH requests that the Commission remove any fee or membership restrictions currently placed by NAESB on obtaining access to the most current standards incorporated by reference by the Commission. IRH argues that these documents should be freely available to the public. UI similarly claims that these fee and licensing restrictions will seriously limit the ability of entities to obtain access to applicable regulatory requirements pertaining to OASIS. UI argues that existing OASIS standards are presently available to the public, at no charge, and any amendments proposed by the WEQ to those standards as part of this rulemaking proceeding should also be publicly available.

Commission Conclusion

96. The Commission neither determined the fees for the standards, nor are we in a position to waive the fees charged by NAESB. NAESB's policies are set by the industry, and the industry has determined that charging fees for access to the standards is appropriate. To the extent the commenters wish to change this NAESB policy, they need to pursue this issue at NAESB to craft an approach that a consensus of the industry finds reasonable.

97. As the Commission has explained in previous orders,[73] the Commission cannot waive or otherwise change the NAESB policy. Section 12 of NTTAA establishes a government policy under which agencies are to rely upon, and adopt, private sector standards, such as those adopted by the WEQ, whenever practicable and appropriate.[74] The Freedom of Information Act and its implementing regulations establish that the proper method of adopting such copyrighted material by a federal agency is to incorporate it by reference into the agency's regulations.[75] To be eligible for incorporation by reference, the document must be reasonably available to the class of persons affected by the publication.[76] Once adopted, a copy must be provided to the Office of the Federal Register for viewing and the material must be available and readily obtainable. Neither the statute nor the regulations require that the standards be available at no cost. Indeed, standards incorporated by reference are exempt from the requirement that the agency charge fees for providing copies of documents according to its fee schedule.[77] The Office of the Federal Register has approved the WEQ standards for incorporation by reference. Most standards incorporated by reference in government regulations require a fee or charge to obtain the standards. The American National Standards Institute (ANSI), which administers and coordinates the U.S. voluntary standardization and conformity assessment system, explains that fees for standards are necessary because ''while most of the people working on standards development are volunteers, standards developers incur expense in the coordination of these voluntary efforts.'' [78]

98. The Commission finds that the WEQ standards meet the test of being reasonably accessible to all industry members. Members of NAESB obtain access to the standards for free. Those who choose not to join can obtain the standards booklet for a fee of $100.[79] The commenters do not, and cannot reasonably, contend that a $100 cost constitutes an extreme burden to members of the electric industry.

99. As to NEPOOL's argument that these standards will need to be accessed not only by public utilities, but also by their customers, we do not find that $100 is beyond the means of most customers, and the public utilities may be willing to make the standards available to their customers to review. In our view, the costs public utilities will incur to obtain these standards from NAESB are a *de minimis* expense since the benefits to the industry and the public of replacing a Commission-driven approach to standards development with the NAESB process far outweighs the burden of these costs. In fact, one of the major reasons for having the WEQ develop standards is that it is far more efficient and cost effective for the industry than having the Commission develop standards, like OASIS, using Commission processes.

[70] Pub. L. 104–113, section 12(d), 110 Stat. 783, as amended Pub. L. 107–107, Div. A Title XI, section 1115 (2001), 15 U.S.C. 272 note (2005).

[71] *See, e.g., Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587–R, 68 FR 13813, FERC Stats. & Regs., Regulation Preambles ¶ 31,141 at P 29–37 (2003).

[72] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587–A , 61 FR 55208, 77 FERC ¶ 61,061, at 61,232 (1996); Order No. 587–K, 64 FR 17276, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,072 at 30,775 (1999). *See* Freedom of Information Act, 5 U.S.C. 552 (a)(1) (2000); 1 CFR 51.7(4) (requirements established for incorporation by reference); Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A–119, at 6(a)(1) (Feb. 10, 1998), *http://www.whitehouse.gov/omb/circulars/a119/a119.html* (incorporation by reference appropriate means of adopting private sector standards under the NTTAA). Indeed, the Commission could not reproduce the WEQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[73] Order No. 587–R, 68 FR 13813, FERC Stats. & Regs., Regulation Preambles ¶ 31,141 at P 29–37 (2003); Order No. 587–A, 61 FR 55208, 77 FERC ¶ 61,061 at 61,232 (1996); Order No. 587–K, 64 FR 17276, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,072 at 30,775 (1999).

[74] *See* note 71, *supra*.

[75] 5 U.S.C. 552(a)(1) (for the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register); 1 CFR 51.7(4). Indeed, the Commission could not reproduce the WEQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[76] 1 CFR 51.7(a)(2)–(4).

[77] 5 U.S.C. 553(a)(3).

[78] *See* American National Standards Institute, *Why Charge for Standards?, http://www.ansi.org/help/charge_standards.aspx?menuid=help* (accessed 12/9/05). Allowing non-NAESB members free access to these standards would permit them to free ride off of the time and money invested by those who have joined NAESB and are actively participating to make the standards process beneficial to the entire industry.

[79] NAESB Home Page, *http://www.naesb.org/pdf/ordrform.pdf.*

III. Implementation Dates and Procedures

100. The Version 000 standards we are incorporating by reference in this Final Rule must be implemented by July 1, 2006. Public utilities are required to include these standards in their OATTs. Public utilities filing proposed revisions to their OATTs to include these standards must do so with their next unrelated OATT filing in accordance with the following schedule. On or after June 1, 2006, a public utility filing proposed OATT revisions unrelated to this rule is required to file proposed revisions to its OATT to include the standards adopted in this Final Rule as part of that filing. (Prior to June 1, 2006, a public utility filing proposed OATT revisions unrelated to this rule has the option of filing proposed OATT revisions to include the standards adopted in this Final Rule as part of that filing.) As the standards adopted in this Final Rule must be implemented by July 1, 2006, the OATT revisions filed to comply with this rule are to include an effective date of July 1, 2006.[80] Any requests for waiver of any of these standards must be filed on or before June 1, 2006.

101. If adoption of these standards does not require any changes or revisions to existing OATT provisions, public utilities may comply with this rule by adding a provision to their OATTs that incorporates the standards adopted in this rule by reference, including the standard number and Version 000 to identify the standard. To incorporate these standards into their OATTs, public utilities must use the following language in their OATTs:

- Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 001–0.2 through 001–0.8, 001–2.0 through 001–9.6.2, 001–9.8 through 001–10.8.6, and Examples 001–8.3–A, 001–9.2–A, 001–10.2–A, 001–9.3–A, 001–10.3–A, 001–9.4.1–A, 001–10.4.1–A, 001–9.4.2–A, 001–10.4.2–A, 001–9.5–A, 001–10.5–A, 001–9.5.1–A, and 001–10.5.1–A;
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 002–1 through 002–5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standard 003–0;
- Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 004–0 through 004–13, and 004–A through 004–D;
- Area Control Error (ACE) Equation Special Cases Standards (WEQ–005, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 005–0 through 005–3.1.3, and 005–A;
- Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 006–0 through 006–12; and
- Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 007–0 through 007–2, and 007–A.

102. If a public utility requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a public utility has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver. Instead, the public utility's OATT should specify those standards for which the public utility has obtained a waiver or has pending a request for waiver. Once a waiver request is denied, the public utility will be required to include in its OATT the standard(s) for which waiver was denied.

IV. Notice of Use of Voluntary Consensus Standards

103. Office of Management and Budget (OMB) Circular A–119 (section 11) (February 10, 1998) provides that when a Federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WEQ.

V. Information Collection Statement

104. OMB's regulations in 5 CFR 1320.11 (2005) require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB assigns an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

105. This Final Rule will affect the following existing data collections: Electric Rate Schedule Filings (FERC–516) and Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (formerly Open Access Same Time Information System).

106. The following burden estimates cover compliance with this rule:

Public Reporting Burden:

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–516	220	1	6	1,320
FERC–717	220	1	24	5,280
Totals			30	6,600

[80] Please note that the standards adopted in this Final Rule must be implemented as of July 1, 2006, regardless of whether the public utility has yet filed OATT revisions incorporating these standards.

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 6,600

Information Collection Costs: The Commission has projected the average annualized cost for all respondents to comply with these requirements to be the following: [81]

	FERC–516	FERC–717
Annualized Capital/Startup Costs	$198,000	$792,000
Annualized Costs (Operations & Maintenance)	N/A	N/A
Total Annualized Costs	198,000	792,000

107. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments addressed the reporting burden.

108. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple transmission providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

109. OMB regulations [82] require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

110. *Title:* Electric Rate Schedule Filings (FERC–516).

Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (formerly Open Access Same Time Information System).

Action: Proposed collections.

OMB Control Nos.: 1902–0096 and 1902–0173.

Respondents: Business or other for profit (Public Utilities (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This rule upgrades the Commission's current business practice and communication standards to include standardized practices and address currently unresolved issues. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

111. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing OASIS posting requirements and business practice standards to conducting transactions under the NAESB WEQ standards. This Final Rule requires utilities to include the incorporated standards in their respective tariffs and requires OASIS postings to be reported in forums that are directly accessible by industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the FPA. The Commission will use the data in rate proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

112. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov;* or by contacting:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control Nos. 1902–0096 & 1902–0173), Tel: (202) 395–4650, E-mail: *omb_submissions@omb.eop.gov.*

VI. Environmental Analysis

113. The Commission is required to prepare an environmental assessment or an environmental impact statement for any action that may have a significant adverse effect on the human environment.[83] As the Commission stated in the Standards NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in this categorical exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[84] The categorical exclusion also includes information gathering, analysis, and dissemination.[85] The requirements imposed by this Final Rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[86] As a result, neither an environmental impact statement nor an environmental assessment is required.

VII. Regulatory Flexibility Act Certification

114. The Regulatory Flexibility Act of 1980 (RFA) [87] generally requires a description and analysis of any final rule that will have significant economic impact on a substantial number of small entities. The rule adopted here imposes requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

115. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small businesses and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: Tiering or establishment of different compliance or reporting

[81] The total annualized costs for the two information collections is $198,000 + $792,000 = $990,000. This number is reached by multiplying the total hours to prepare a response (6,600 hours) by an hourly wage estimate of $150. $990,000 = $150 × 6,600.

[82] 5 CFR 1320.11.

[83] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[84] 18 CFR 380.4(a)(2)(ii).

[85] 18 CFR 380.4(a)(5).

[86] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[87] 5 U.S.C. 601–612.

requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as ''Standards for Business Practices and Communication Protocols for Public Utilities'' apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction, and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of these regulations.[88] As discussed above, in response to comments on this issue, in this order we are extending (to small entities that previously were granted waivers from the requirements of Order Nos. 888 and 889) waivers of the OASIS requirements adopted in this Final Rule, with the condition that these entities file a short letter identifying the case name, date, and docket number of the proceeding in which they received their waiver. In addition, if material circumstances change that would affect their continued qualification for a waiver, they must report this to the Commission.

116. The procedures the Commission is following in this Final Rule are in keeping with exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[89] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Document Availability

117. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC'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.

118. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–5'' in the docket number field.

119. User assistance is available for eLibrary and the FERC's Web site during the Commission's normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

IX. Effective Date and Congressional Notification

120. This Final Rule will take effect June 5, 2006. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[90] The incorporation by reference of certain standards listed in this Final Rule is approved by the Director of the Federal Register as of June 5, 2006. The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.[91]

List of Subjects

18 CFR Part 35

Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 37

Conflict of interests, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission revises parts 35 and 37 and adds part 38 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.28, add paragraph (c)(1)(vi) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariffs.

* * * * *

(c) *Non-discriminatory open access transmission tariffs.*

(1) * * *

(vi) Each public utility's open access transmission tariff must include the standards incorporated by reference in part 38 of this chapter.

* * * * *

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 3. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. In § 37.5, paragraph (b) is revised to read as follows:

§ 37.5 Obligations of transmission providers and responsible parties.

* * * * *

(b) A Responsible Party must provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this part) pertaining to the transmission system for which it is responsible.

* * * * *

■ 5. Part 38 is added to read as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

Sec.
38.1 Applicability.
38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 38.1 Applicability.

This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) All entities to which § 38.1 is applicable must comply with the following business practice and electronic communication standards promulgated by the North American Energy Standards Board Wholesale Electric Quadrant, which are incorporated herein by reference:

[88] Small entities that qualified for a waiver from the requirements of Order Nos. 888 and 889 may apply for a waiver of the requirement to comply with the standards incorporated by reference in the regulations we are adopting in this Final Rule.

[89] 5 U.S.C. 605(b).

[90] *See* 5 U.S.C. 804(2).

[91] *See* 5 U.S.C. 801(a)(1)(A).

(1) Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005) with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0 through 001–1.8, and 001–9.7.

(2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(4) Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(6) Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005); and

(7) Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005).

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 1301 Fannin, Suite 2350, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Editorial Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

LIST OF COMMENTERS TO STANDARDS NOPR

Abbreviation	Name
APPA	American Public Power Association.
Bonneville	Bonneville Power Administration.
CAISO	California Independent System Operator Corporation.
Cinergy	Cinergy Services, Inc., *et al.*
EEI	Edison Electric Institute and Alliance of Energy Suppliers.
Exelon	Exelon Corporation.
FirstEnergy Companies	FirstEnergy Companies.
GCEC	Graham County Electric Cooperative, Inc.
IRH	Interconnection Rights Holders Management Committee.
ISO/RTO Council	ISO/RTO Council.
LADWP	City of Los Angeles Department of Water and Power.
Lockhart	Lockhart Power Company.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
NAESB	North American Energy Standards Board.
NEPOOL	New England Power Pool Participants Committee.
NERC	North American Electric Reliability Council.
NRECA	National Rural Electric Cooperative Association.
NY Transmission Owners	Indicated New York Transmission Owners.
SCE	Southern California Edison Company.[92]
Southern Companies	Southern Company Services, Inc., *et al.*
TAPS	Transmission Access Policy Study Group.
UI	United Illuminating Company.
Unitil Companies	Unitil Energy Systems, Inc., *et al.*

[92] SCE filed a motion to intervene, but no comments.

[FR Doc. 06–4072 Filed 5–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA37

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations implementing the statute generally known as the Bank Secrecy Act to require mutual funds to report suspicious transactions to the Financial Crimes Enforcement Network. The amendment constitutes a further step in the enhancement of the comprehensive system for the reporting of suspicious transactions by major categories of financial institutions operating in the United States, as a part of the Department of the Treasury's counter-money laundering program.

DATES: *Effective Date:* This final rule is effective June 5, 2006.

Applicability Date: The requirements in this final rule apply to transactions occurring after October 31, 2006. *See* 31 CFR 103.15(g) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act [1] authorizes the Secretary of the Treasury (Secretary) to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[2] The Secretary's authority to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network. Our regulations implementing the Bank Secrecy Act are codified at 31 CFR part 103.

With the enactment of 31 U.S.C. 5318(g) in 1992,[3] Congress authorized the Secretary to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT Act, subsection 5318(g)(1) states that:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> That makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [4] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or U.S. intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [5]

B. Mutual Fund Regulation and Money Laundering

This final rule applies to investment companies that are ''mutual funds,'' which are open-end management investment companies as described in the Investment Company Act of 1940 (15 U.S.C. 80a). Mutual funds are the predominant type of investment companies. As of September 2005, investors held approximately $8.6 trillion in U.S. mutual fund shares, representing more than 95 percent of the assets held by investment companies regulated by the U.S. Securities and Exchange Commission (Commission).[6] Currently, more than 2,400 active mutual funds are registered with the Commission.[7]

This final rule is part of a series of steps that we are taking to address comprehensively the risk of money laundering through mutual funds. In April 2002, we issued an interim final rule to implement section 352 of the USA PATRIOT Act. The interim final rule required mutual funds to develop and implement anti-money laundering programs designed to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring compliance with the applicable requirements of the Bank Secrecy Act and its implementing regulations.[8] In May 2003, we issued, jointly with the Commission, a final rule to implement section 326 of the USA PATRIOT Act, requiring mutual funds to implement reasonable procedures to: (1) Verify the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintain records of the information used to verify the person's identity; and (3) determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any federal government agency and designated as such by the Department of the Treasury in consultation with federal functional regulators.[9]

---

[1] Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332.

[2] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[3] 31 U.S.C. 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[4] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' *See* 31 U.S.C. 5318(g)(4)(C).

[5] *See* 31 U.S.C. 5318(g)(4)(B).

[6] The staff of the Commission estimates, based on filings, that as of September 2005, approximately $8.6 trillion was invested in U.S. mutual funds (including $1 trillion invested in open-end management companies that fund variable life insurance and variable annuity contracts, and $259 billion invested in open-end management companies that are exchange-traded funds).

[7] Approximately 1,219 of these funds are ''series companies'' with an aggregate of 8,425 portfolios. A ''series company'' is a registered investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series. 17 CFR 270.18f–2. The assets allocated to such a class or series are commonly known as a ''portfolio.'' The series or portfolios of a series company operate, for many purposes, as separate investment companies.

[8] *See* 67 FR 21117 (Apr. 29, 2002).

[9] *See* 68 FR 25131 (May 9, 2003) text accompanying notes 116–117. Under the final rule, a mutual fund may contractually delegate the implementation and operation of its customer identification program to a service provider such as a transfer agent, although the mutual fund would continue to be responsible for compliance with applicable requirements.

This final rule follows other recent actions that expand the application of requirements that financial institutions report suspicious activity. Since April 1996, we have issued rules under the authority of 31 U.S.C. 5318(g) requiring banks, thrifts, and other banking organizations to report suspicious activity.[10] In collaboration with us, the federal bank supervisory agencies concurrently issued suspicious activity reporting rules under their own authority, applying to banks, bank holding companies, and non-depository institution affiliates and subsidiaries of banks and bank holding companies.[11] Since the beginning of 2002, we have required certain money services businesses to report suspicious activity.[12] We adopted final rules for the reporting of suspicious activity applicable to brokers or dealers in securities in July 2002,[13] to casinos and card clubs in September 2002,[14] to currency dealers and exchangers in February 2003,[15] to futures commission merchants and introducing brokers in commodities in November 2003,[16] and to insurance companies in November 2005.[17] This final rule extends suspicious activity reporting to mutual funds. Suspicious activity reporting by mutual funds is expected to provide highly useful information in law enforcement and regulatory investigations and proceedings, as well as in the conduct of intelligence activities to protect against international terrorism.[18]

II. Notice of Proposed Rulemaking

On January 21, 2003, we published a Notice of Proposed Rulemaking (Proposed Rule), proposing an amendment to the regulations implementing the Bank Secrecy Act that would extend the requirement to report suspicious activity to mutual funds.[19] The comment period for the Proposed Rule ended on March 24, 2003. We received five comment letters: Three from trade associations, and one each from a regulatory advocacy group and an academic society at a university. These comments are discussed below in the Section-by-Section Analysis.

III. Section-by-Section Analysis

A. Section 103.15(a)—Reports by Mutual Funds of Suspicious Transactions

Section 103.15(a) sets forth the obligation of mutual funds to report suspicious transactions that are conducted or attempted by, at, or through a mutual fund and that involve or aggregate at least $5,000 in funds or other assets.[20] The obligation to report a transaction under this rule and 31 U.S.C. 5318(g) applies whether or not the transaction involves currency.[21] We are aware that the use of currency in mutual funds transactions is rare.

The obligation extends to transactions conducted or attempted by, at, or through, the mutual fund. However, section 103.15(a) also contains language designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require (for example, in the case of a transaction falling below the $5,000 threshold in the rule).

Section 103.15(a) contains the general statement regarding a mutual fund's obligation to file reports of suspicious transactions with us. To clarify that the final rule creates a reporting requirement that is uniform with that for other financial institutions, section 103.15(a)(1), which is unchanged from the proposed rule, incorporates language from the suspicious activity reporting rules applicable to other financial institutions, such as banks, broker-dealers, casinos, and money services businesses, requiring the reporting of ''any suspicious transaction relevant to a possible violation of law or regulation.'' Further, a mutual fund may also report ''any suspicious transaction that it believes is relevant to a possible violation of any law or regulation but whose reporting is not required'' by the final rule. For example, a mutual fund may report a suspected violation of law that involves less than $5,000. Such voluntary reporting would be subject to the same protection from liability as mandatory reporting pursuant to 31 U.S.C. 5318(g)(3).

The final rule requires reporting by mutual funds, but not by affiliated persons of mutual funds. This approach is consistent with our other rules requiring the reporting of suspicious activity.

Mutual funds typically conduct many operations through separate entities, which may or may not be affiliated

[10] *See* 31 CFR 103.18 (requiring banks, thrifts, and other banking organizations to report suspicious transactions).

[11] *See* 12 CFR 21.11 (issued by the Office of the Comptroller of the Currency); 12 CFR 208.62 (issued by the Board of Governors of the Federal Reserve System); 12 CFR 353.3 (issued by the Federal Deposit Insurance Corporation); 12 CFR 563.180 (issued by the Office of Thrift Supervision); 12 CFR 748.1 (issued by the National Credit Union Administration).

[12] *See* 31 CFR 103.20 (requiring money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious transactions).

[13] *See* 67 FR 44048 (July 1, 2002). In 2003, broker-dealers filed 4,267 Suspicious Activity Reports, 5.7% of which (242 reports) involved money market funds and 6.3% of which (268 reports) involved other mutual funds. In the first six months of 2004, of 2,612 reports filed by broker-dealers, 5.3% (139 reports) involved money market funds and 6.2% (162 reports) involved other mutual funds. Financial Crimes Enforcement Network, The SAR Activity Review—By the Numbers (Issue 3, December 2004).

[14] *See* 67 FR 60722 (September 26, 2002).

[15] *See* 68 FR 6613 (February 10, 2003).

[16] *See* 68 FR 65392 (November 20, 2003).

[17] *See* 70 FR 66761 (November 3, 2005).

[18] *See* 31 U.S.C. 5311 (stating purpose of the reporting authority under the Bank Secrecy Act).

[19] *See* 68 FR 2716 (January 21, 2003).

[20] A mutual fund is already obligated to report the receipt of cash (and certain cash-related instruments) totaling more than $10,000 in one transaction or two or more related transactions. *See* 67 FR at 21119. 26 U.S.C. 6050I requires a person to report information about such transactions to the Internal Revenue Service; 31 U.S.C. 5331 requires a person to report information about similar transactions to us. One commenter expressed concern over some mutual funds or their transfer agents being required to file both a report under this final rule and a report under 26 U.S.C. 6050I (''Form 8300'') because they are considered to be ''nonfinancial trades or businesses.'' The commenter expressed concern about both duplication of reporting and conflicting disclosure provisions, because 26 CFR 1.6050I–1(f) requires notifying the subject of a report that the amount of cash in the transaction(s) is being reported to the Internal Revenue Service, whereas section 103.15(d) of this final rule prohibits notifying the subject of a Suspicious Activity Report that the transaction has been reported. With regard to the concern over duplication of reporting, we note that the forms serve different purposes and are required under different circumstances. Form 8300 is designed to provide information about large cash (and certain non-cash instrument) transactions received by a business. The triggering factors are entirely objective. On the other hand, the Suspicious Activity Report is designed to provide information about transactions and activity that the reporting entity knows, suspects, or has reason to suspect may be a violation of law or regulation. The triggering factors for the Suspicious Activity Report are largely subjective. While it is possible that a particular transaction may trigger the filing of both forms, and while some of the information provided may overlap, the purposes for the filings and the ways in which the information will be used by law enforcement differ greatly. Furthermore, the filing of a Form 8300 does not presume the filing of a Suspicious Activity Report, and vice versa. Moreover, with regard to the concern over conflicting disclosure requirements, we note that there is nothing in the requirement for disclosure of the filing of a report under 26 U.S.C. 6050I that would require disclosure of the filing of a Suspicious Activity Report. In fact, a mutual fund is prohibited from intentionally or unintentionally disclosing the filing of a Suspicious Activity Report when it discloses the filing of a report of the receipt of cash or certain non-cash instruments, as required by 26 CFR 1.6050I–1(f).

[21] Many currency transactions are *not* indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by us, in issuing rules to implement that system (*see* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). Many non-currency transactions (for example, transmittals of funds) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

persons of the mutual fund. These separate entities include investment advisers, principal underwriters, administrators, custodians, transfer agents, and other service providers. Personnel of these separate entities may be in the best position to perform the reporting obligation, and a mutual fund may contract with an affiliated or unaffiliated service provider to perform the reporting obligation as the fund's agent. In such cases, however, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the performance of its reporting obligations.[22] The fund should take steps to assure that the service provider has implemented effective compliance policies and procedures administered by competent personnel, and should maintain an active working relationship with the service provider's compliance personnel.[23]

Section 103.15(a)(2), which is also unchanged from the Proposed Rule, requires the reporting of suspicious activity that involves or aggregates at least $5,000 in funds or other assets. The suspicious activity reporting rules, however, are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, such requirements are intended to function in such a way as to have financial institutions evaluate customer activity and relationships for money laundering risks.[24]

Section 103.15(a)(2) specifies four categories of transactions that require reporting if the mutual fund knows, suspects, or has reason to suspect that any such category applies to a transaction, or a pattern of transactions of which the transaction is a part. The ''knows, suspects, or has reason to suspect'' standard incorporates a concept of due diligence into the reporting requirement.

The first category, described in section 103.15(a)(2)(i), includes transactions involving funds derived from illegal activity, or intended or conducted in order to hide or disguise funds derived from such illegal activity as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation. The second category, described in section 103.15(a)(2)(ii), includes transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third category, described in section 103.15(a)(2)(iii), includes transactions that appear to serve no business or apparent lawful purposes, and for which the mutual fund knows of no reasonable explanation after examining the available facts relating to the transaction and the parties. The fourth category, described in section 103.15(a)(2)(iv), includes any other transactions that involve the use of the mutual fund to facilitate criminal activity.[25]

In determining whether to file a Suspicious Activity Report, a mutual fund must base the determination on all of the facts and circumstances relating to the transaction and the customer in question.[26] Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may indicate the need to file a Suspicious Activity Report. For example, if a mutual fund closes the account and redeems the shares of a customer whose identity the fund is unable to verify under its customer identification program,[27] the fund should consider whether the circumstances surrounding its failure to verify would warrant the filing of a Suspicious Activity Report. In these and other situations, the fact that a customer refuses to provide information necessary for the mutual fund to verify the customer's identity, make reports, or keep records required by this part or other regulations, provides information that the mutual fund determines to be false, or seeks to change or cancel a transaction after such person is informed of information verification or recordkeeping requirements relevant to the transactions, would indicate the probability that a Suspicious Activity Report should be filed.[28] In other situations, determining whether a transaction is suspicious within the meaning of the rule may require more involved judgment. Transactions that raise the need for such judgment may include, for example: (1) Transmission or receipt of funds transfers without normal identifying information, or in a manner that may indicate an attempt to disguise or hide the country of origin or destination, or the identity of the customer sending the funds, or the beneficiary to which the funds are sent; or (2) repeated use of a mutual fund as a temporary resting place for funds from multiple sources without a clear business (including investment) purpose. The judgments involved will also extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that removes it from the suspicious category.[29]

The means of commerce and the techniques of money launderers are continually evolving, and it is not possible to provide an exhaustive list of suspicious transactions. We intend to continue our dialogue with the mutual fund industry about the manner in which a combination of government guidance, training programs, and government-industry information exchange can facilitate operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

[22] Under 17 CFR 270.38a–1, each mutual fund must appoint a chief compliance officer, reporting directly to the mutual fund's board of directors, to administer its compliance policies and procedures. *See* 68 FR 74714 (December 24, 2003).

[23] For a discussion of the oversight responsibilities of mutual funds over their service providers, *see* Compliance Programs of Investment Companies and Investment Advisers, *supra* note 22, nn.91–92 and accompanying text.

[24] For example, transactions involving investments by the pension fund of a publicly traded corporation, even though involving a large dollar amount, would likely require more limited scrutiny than less typical transactions, such as those involving customers who wish to use currency or money orders to purchase mutual fund shares, even though the dollar amounts in those latter cases may be relatively small.

[25] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions in which legally derived funds are used for criminal activity, such as the financing of terrorism.

[26] In the case of a transaction conducted through an omnibus account maintained by an intermediary, a mutual fund may not know, suspect, or have reason to suspect that the transaction is one for which reporting would be required, because a fund typically has little or no information about individual customers of the intermediary. An omnibus account is usually maintained by another financial institution, such as a broker-dealer, that has a reporting obligation with regard to its customers. The omnibus account holder (*i.e.*, the financial institution intermediary) is a customer of the mutual fund for purposes of the final rule. An omnibus account maintained for a foreign financial institution would be considered a correspondent account under section 312 of the USA PATRIOT Act, and as such, is subject to due diligence and possibly enhanced due diligence requirements under that section of the Act and implementing regulations. *See* Anti-Money Laundering Programs; Special Due Diligence for Certain Foreign Accounts, 71 FR 496 (Final Rule) and 71 FR 516 (Notice of Proposed Rulemaking) (January 4, 2006).

[27] *See supra* note 9 and accompanying text.

[28] As section 103.15(d) of the final rule makes clear, the mutual fund must not notify the customer that it intends to file or has filed a Suspicious Activity Report with respect to the customer's activity.

[29] One commenter expressed concern that a mutual fund would be expected to obtain additional information that it does not already have to meet the ''knows, suspects, or has reason to suspect'' standard of section 103.15(a)(2). We expect funds to determine whether to file a Suspicious Activity Report based on the information obtained in the account opening process or subsequently in the course of processing transactions.

Individual mutual funds are frequently part of a complex of related funds, and it is possible that more than one mutual fund would be obligated to report the same transaction or transactions. In order to clarify the permissibility of joint reports, section 103.15(a)(3) of the final rule has been revised to permit all of the mutual funds involved in a particular transaction to file a single joint report. Because the Suspicious Activity Report by Securities and Futures Industries (''Form SAR–SF'') accommodates the name of only one filer, only one of the filing institutions should be identified as the ''filer'' in the filer identification section of the form.[30] The narrative section of the Form SAR–SF must include the words ''joint filing'' and identify the other mutual funds on whose behalf the report is being filed. The joint report must contain all relevant facts, and each mutual fund must maintain a copy of the joint report, along with any supporting documentation.[31] A service provider who performs reporting obligations under contract with multiple mutual funds may file a single joint report on behalf of all of the funds involved in a transaction or series of transactions.[32]

Further, section 103.15(a)(3) of the final rule has been revised to also recognize that other financial institutions, such as broker-dealers in securities, may have separate obligations to report the same suspicious activity under other Bank Secrecy Act regulations.[33] In those instances, it is permissible for either a mutual fund or the other financial institution to file a single joint report on behalf of all of the mutual fund(s) and other financial institution(s) involved in the transaction. As with a joint report filed by a mutual fund on behalf of other mutual funds, the joint report filed must contain all relevant facts, and the narrative of the Form SAR–SF must include the words ''joint filing'' and must identify the other financial institutions on whose behalf the report is being filed.

One commenter requested that this final rule clarify that it will not impose a duplicative reporting requirement on insurance companies, because a single transaction may create a reporting requirement for both an insurance company, under the rule applicable to insurance companies,[34] and for a separate account of the insurance company that issues variable insurance products, under this rule. Because this rule applies only to open-end management investment companies, it does not apply to separate accounts that are organized as unit investment trusts, which comprise a majority of the separate accounts that issue variable insurance products. Accordingly, the rule applies only to a separate account that is organized as a managed separate account. To avoid the possibility of duplicative suspicious activity reporting, we are contemporaneously amending the rule applicable to insurance companies to require an insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund to report suspicious activity pursuant to this final rule.[35] In addition, a registered broker-dealer involved in a suspicious transaction may file a joint report on behalf of any separate account under section 103.15(a)(3).

When a mutual fund or other financial institution files or considers filing a joint report on behalf of other mutual funds, it typically will exchange information with the other entities to determine whether the transaction must be reported under this section, and, if so, to determine which party should file the report, provide the filer with comprehensive information and supporting documentation, and provide confirmation of the filing to each mutual fund (and other financial institution) involved in the transaction. Prior to filing a joint report, a mutual fund may share information pertaining to a suspicious transaction with any other financial institution or service provider involved in the transaction, provided that such financial institution or service provider will not be the subject of the report. Such sharing of information does not violate the non-disclosure provisions of section 103.15(d).[36] If a service provider is performing the reporting obligations of one or more mutual funds under contract with the fund(s), the service provider may similarly share the information as an agent of the mutual fund(s).[37] However, after the report is filed, further disclosure of the fact that a suspicious activity report was filed is prohibited, except as permitted by section 103.15(d). The cross-reference in section 103.15(d) to section 103.15(a)(3) in the Proposed Rule remains in the final rule.

B. Section 103.15(b)—Filing Procedures

Section 103.15(b), unchanged from the proposed rule except as noted in footnote 39 below, directs mutual funds to report suspicious activities by completing a Form SAR–SF, and sets forth the filing procedures to be followed by mutual funds making reports of suspicious activity. Within 30 days after initial detection of a suspicious activity by a mutual fund, the fund must report the transaction by completing a Form SAR–SF, collecting and maintaining supporting documentation, and filing the form as indicated in the instructions to the form. The filer should not submit the supporting documentation with the Form SAR–SF. Form SAR–SF is the same form used by broker-dealers, futures commission merchants, and introducing brokers in commodities.[38] If a separate entity that is not a financial institution files a Form SAR–SF as agent for a mutual fund, that entity should designate the mutual fund as the reporting financial institution on the Form SAR–SF.

If the mutual fund does not identify a suspect on the date of the initial detection, it may delay filing a Form SAR–SF for 30 days, but may not delay filing more than 60 days after the date of such initial detection. In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund must notify an appropriate law enforcement authority by telephone in addition to filing a Form SAR–SF.[39] A mutual fund may also, but is not required to, contact the Commission in such situations. A mutual fund that chooses to contact the Commission should contact its Office of Compliance Inspections and Examinations. In addition, we wish to remind mutual funds of our Financial Institutions Hotline (1–866–556–3974), which financial institutions may use to voluntarily report suspicious activity that may relate to terrorist financing. Mutual funds that report suspicious activity by calling the Financial

[30] The term ''SF'' is an abbreviation for ''Securities and Futures Industries,'' the form that is used for reporting by members of the securities and futures industries. *See* 67 FR 50751 (August 5, 2002). The form became final on December 26, 2002, and is available on our Web site at *http://www.fincen.gov/reg_bsaforms.html.*

[31] The filer should not submit supporting documentation with the Form SAR–SF. *See infra* note 38 and accompanying text.

[32] *See supra* note 22 and accompanying text.

[33] *See* 31 CFR 103.19.

[34] *See* 31 CFR 103.16.

[35] *See* 31 CFR 103.16(b)(3)(iii).

[36] *See* Section III.D. *infra.*

[37] For a discussion of the types of service providers that may perform reporting obligations under contract with mutual funds, *see supra* note 22 and accompanying text.

[38] *See* 67 FR 70808 (November 26, 2002) (effective January 1, 2003).

[39] The final rule has been revised to make such notification mandatory, to be consistent with the reporting rules for other financial institutions. *See, e.g.*, 31 CFR 103.18(b)(3), 103.19(b)(3), and 103.16(c)(3).

Institutions Hotline must also file a timely Form SAR–SF to the extent required by this final rule.

C. Section 103.15(c)—Retention of Records

Section 103.15(c) requires that a mutual fund maintain copies of Suspicious Activity Reports that it files or that are filed on its behalf (including joint reports), and the original (or business record equivalent) and copies of related documentation, for a period of five years from the date of filing. The final rule has been modified to include references to reports filed on behalf of the fund (*e.g.*, by a service provider) and joint reports (whether filed by the fund or by another financial institution naming the fund). The Suspicious Activity Report and the supporting documentation are to be made available to the Financial Crimes Enforcement Network, the Commission, and other appropriate law enforcement and regulatory authorities. The final rule also has been modified to add a self-regulatory organization registered with the Commission in those cases where a mutual fund maintains supporting documentation concerning a joint Suspicious Activity Report involving a broker-dealer being examined pursuant to 31 CFR 103.19(g).

D. Section 103.15(d)—Confidentiality of Reports

Section 103.15(d) reflects the statutory prohibition against the disclosure of information filed in, or the fact of filing, a Suspicious Activity Report, except to the extent permitted by paragraph (a)(3). The final rule has been revised to clarify that the prohibition applies whether the report is required by the final rule or is filed voluntarily. *See* 31 U.S.C. 5318(g)(2). Section 103.15(d) extends the prohibition to any mutual fund subpoenaed or otherwise required to disclose a Suspicious Activity Report or information contained in a Form SAR–SF. Thus, section 103.15(d) specifically prohibits persons filing Suspicious Activity Reports (including persons on whose behalf a report has been filed) from disclosing, except to the Financial Crimes Enforcement Network, the Commission, or another appropriate law enforcement or regulatory agency, or a self-regulatory organization registered with the Securities and Exchange Commission conducting an examination of a broker-dealer pursuant to 31 CFR 103.19(g), that a Suspicious Activity Report has been filed or from providing any information that would disclose that a report has been prepared or filed. The final rule has been modified to note that the prohibition also applies to joint reports.

Section 103.15(d) does not prohibit a mutual fund from engaging in discussions with any other financial institution or service provider involved in the transaction, other than the person who is or is expected to be the subject of the report, to determine whether the transaction must be reported under this section; to determine which party will file the report, provide the filer with comprehensive information and supporting documentation; and to provide confirmation of the filing to each mutual fund involved in the transaction.[40] Similarly, this provision does not prohibit a service provider who performs reporting obligations under contract with one or more mutual funds from sharing information as an agent of the mutual fund(s). In addition, we have issued regulations under section 314(b) of the USA PATRIOT Act to permit certain financial institutions, after providing notice to us, to share information with one another solely for the purpose of identifying and reporting to the federal government activities that may involve money laundering or terrorist activity.[41] Neither section 314(b) nor its implementing regulations, however, apply to the sharing of a Suspicious Activity Report with another financial institution. However, as described in Sections III.A. and III.C., a Suspicious Activity Report may be shared between financial institutions for the purposes of jointly filing and maintaining a record of such a report.

E. Section 103.15(e)—Limitation of Liability

Section 103.15(e) restates the broad statutory protection from liability for making reports of suspicious activity and for failure to disclose the fact of such reporting, whether the report is required by the final rule or is filed voluntarily. As amended by section 351 of the USA PATRIOT Act, 31 U.S.C. 5318(g)(3) provides a safe harbor from liability to any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency, and to any financial institution that reports suspicious activity pursuant to section 5318(g) or pursuant to any other authority. Section 5318(g)(3) provides further protection from liability for the non-disclosure of the fact of such reporting. We note that the safe harbor extends to agents of the mutual fund filing reports, including transfer agents and other service providers. The final rule was modified to state the safe harbor in terms of a protection from liability and to include joint reports within the safe harbor.

F. Section 103.15(f)—Examinations and Enforcement

Section 103.15(f), which is unchanged from the proposed rule, provides that the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegatees, will examine compliance with the obligation to report suspicious activity, and that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations. The Department of the Treasury has delegated to the Commission its authority to examine mutual funds for compliance.[42] In reviewing any particular failure to report a transaction as required by this section, the Financial Crimes Enforcement Network and the Commission may take into account the relationship between the particular failure to report and the adequacy of the implementation and operation of a mutual fund's compliance procedures.

G. Section 103.15(g)—Effective Date

Section 103.15(g) provides that the rule applies to transactions occurring after October 31, 2006.

IV. Regulatory Flexibility Act

It is hereby certified that this final regulation will not have a significant economic impact on a substantial number of small entities. Registered investment companies, regardless of their size, are currently subject to the Bank Secrecy Act. Procedures currently in place at mutual funds to comply with existing Bank Secrecy Act rules should help mutual funds to identify suspicious activity and small mutual funds may have an established and limited customer base whose transactions are well known to the fund. Moreover, as indicated below in Section VI, the estimated burden associated with reporting suspicious transactions is minimal.

V. Executive Order 12866

The Department of the Treasury has determined that this final regulation is not a significant regulatory action under Executive Order 12866.

VI. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget in accordance

[40] *See* 31 CFR 103.15(a)(3).

[41] *See* 31 CFR 103.110.

[42] *See* 31 CFR 103.56(b)(6) (delegating authority to examine investment companies to the Commission).

with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0019. The estimated average burden associated with the collection of information in this final rule is four hours per respondent. We received no comment on its recordkeeping burden estimate.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the electronic mail to *ahunt@eop.omb.gov*).

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.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Securities, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

Subpart B—[Amended]

■ 2. In subpart B, § 103.15 is redesignated as § 103.12.

■ 3. In subpart B, a new § 103.15 is added to read as follows:

§ 103.15 Reports by mutual funds of suspicious transactions.

(a) *General.* (1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) (''Investment Company Act'') that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a ''mutual fund''), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least $5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words ''joint filing'' in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* Form SAR–SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR–SF.

(3) *When to file.* A Form SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR–SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR–SF.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a Form SAR–SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any Form SAR–SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR–SF that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR–SF. Supporting

documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR–SF. The mutual fund shall make all supporting documentation available to the Financial Crimes Enforcement Network, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of an examination of a broker-dealer pursuant to § 103.19(g) regarding a joint report, to a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)) registered with the Securities and Exchange Commission, upon request.

(d) *Confidentiality of reports.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, who reports a suspicious transaction under this part (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Any person subpoenaed or otherwise required to disclose a Form SAR–SF or the information contained in a Form SAR–SF, including a Form SAR–SF filed jointly with another financial institution involved in the same transaction (except where such disclosure is requested by the Financial Crimes Enforcement Network, the Securities and Exchange Commission, another appropriate law enforcement or regulatory agency, or, in the case of a joint report involving a broker-dealer, a self-regulatory organization registered with the Securities and Exchange Commission conducting an examination of such broker-dealer pursuant to § 103.19(g)), shall decline to produce Form SAR–SF or to provide any information that would disclose that a Form SAR–SF has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto.

(e) *Limitation of liability.* A mutual fund, and any director, officer, employee, or agent of such mutual fund, that makes a report of any possible violation of law or regulation pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided in 31 U.S.C. 5318(g)(3).

(f) *Examinations and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after October 31, 2006.

4. Add § 103.16(b)(3)(iii) to read as follows:

§ 103.16 Reports by insurance companies of suspicious transactions.

* * * * *

(b) * * *

(3) * * *

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in § 103.15(a)(1) shall file reports of suspicious transactions pursuant to § 103.15.

* * * * *

Dated: April 27, 2006.

Robert W. Werner,

Director, Financial Crimes Enforcement Network.

[FR Doc. 06–4177 Filed 5–3–06; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 275

[DOD–2006–OS–0072]

RIN 0790–AH84

Obtaining Information From Financial Institutions

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is revising its current policies concerning obtaining information from financial institutions under the Right to Financial Privacy Act of 1978, as amended (12 U.S.C. chapter 35). This part prescribes practices and procedures for the Department of Defense to obtain from a financial institution the financial records of its customers.

EFFECTIVE DATES: February 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607–2943.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on February 2, 2006, at 71 FR 5631. No public comments were received. The only change made to this final rule was to move portions of the information into appendices.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 275 is not a significant regulatory action. The rule does not (1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities because it is only concerned with accessing financial records as prescribed by Federal law.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 275

Banks, banking, Credit, Privacy.

■ Accordingly, 32 CFR part 275 is revised as follows:

PART 275—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS; RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Sec.
275.1 Purpose.
275.2 Applicability and scope.
275.3 Definitions.
275.4 Policy.
275.5 Responsibilities.
Appendix A to Part 275—Obtaining Basic Identifying Account Information
Appendix B to Part 275—Obtaining Customer Authorization
Appendix C to Part 275—Obtaining Access by Administrative or Judicial Subpoena or by Formal Written Request
Appendix D to Part 275—Obtaining Access by Search Warrant
Appendix E to Part 275—Obtaining Access for Foreign Intelligence, Foreign Counterintelligence, and International Terrorist Activities or Investigations
Appendix F to Part 275—Obtaining Emergency Access
Appendix G to Part 275—Releasing Information Obtained From Financial Institutions
Appendix H to Part 275—Procedures for Delay of Notice
Appendix I to Part4 275—Format for Obtaining Basic Identifying Account Information
Appendix J to Part 275—Format for Customer Authorization
Appendix K to Part 275—Format for Formal Written Request
Appendix L to Part 275—Format for Customer Notice for Administrative or Judicial Subpoena or for a Formal Written Request
Appendix M to Part 275—Format for Certificate of Compliance With the Right to Financial Privacy Act of 1978
Appendix N to Part 275—Obtaining Access to Financial Records Overseas

Authority: 12 U.S.C. 3401, *et seq.*

§ 275.1 Purpose.

This part:

(a) Updates policies and responsibilities, and prescribes procedures for obtaining access to financial records maintained by financial institutions.

(b) Implements 12 U.S.C. Chapter 35 by providing guidance on the requirements and conditions for obtaining financial records.

§ 275.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD components'').

(b) Only to financial records maintained by financial institutions.

§ 275.3 Definitions.

(a) *Administrative Summons or Subpoena.* A statutory writ issued by a Government Authority.

(b) *Customer.* Any person or authorized representative of that person who used or is using any service of a financial institution or for whom a financial institution is acting or has acted as fiduciary for an account maintained in the name of that person.

(c) *Financial Institution (for intelligence activity purposes only.* (1) An insured bank (includes a foreign bank having an insured branch) whose deposits are insured under the Federal Deposit Insurance Act.

(2) A commercial bank or trust company.

(3) A private banker.

(4) An agency or branch of a foreign bank in the United States.

(5) Any credit union.

(6) A thrift institution.

(7) A broker or dealer registered with the Securities and Exchange Commission.

(8) A broker or dealer in securities or commodities.

(9) An investment banker or investment company.

(10) A currency exchange.

(11) An issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments.

(12) An operator of a credit card system.

(13) An insurance company.

(14) A dealer in precious metals, stones, or jewels.

(15) A pawnbroker.

(16) A loan or finance company.

(17) A travel agency.

(18) A licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(19) A telegraph company.

(20) A business engaged in vehicle sales, including automobile, airplane, and boat sales.

(21) Persons involved in real estate closings and settlements.

(22) The United States Postal Service.

(23) An agency of the United States Government or of a State or local government performing a duty or power of a business described in this definition.

(24) A casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which is licensed as a casino, gambling casino, or gaming establishment under the laws of a State or locality or is an Indian gaming operation conducted pursuant to, and as authorized by, the Indian Gaming Regulatory Act.

(25) Any business or agency that engages in any activity which the Secretary of the Treasury, by regulation determines to be an activity in which any business described in this definition is authorized to engage; or any other business designated by the Secretary of the Treasury whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(26) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act that is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(d) *Financial Institution (other than for intelligence activity purposes).* Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(e) *Financial Record.* An original, its copy, or information known to have been derived from the original record held by a financial institution that pertains to a customer's relationship with the financial institution.

(f) *Government Authority.* Any agency or Department of the United States, or any officer, employee, or agent thereof, to include DoD law enforcement offices, personnel security elements, and/or intelligence organizations.

(g) *Intelligence Activities.* The collection, production, and dissemination of foreign intelligence and counterintelligence, to include investigation or analyses related to international terrorism, by DoD intelligence organizations.

(h) *Intelligence Organizations.* Any element of a DoD Component authorized by the Secretary of Defense to conduct intelligence activities.

(i) *Law Enforcement Inquiry.* A lawful investigation or official proceeding that inquires into a violation of or failure to comply with a criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(j) *Law Enforcement Office.* Any element of a DoD Component authorized by the Head of the DoD Component conducting law enforcement inquiries.

(k) *Person.* An individual or a partnership consisting of five or fewer individuals.

(l) *Personnel Security Element.* Any element of a DoD Component authorized by the Secretary of Defense conducting personnel security investigations.

(m) *Personnel Security Investigation.* An investigation required for determining a person's eligibility for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations conducted for the purpose of making personnel security determinations. They also include investigations of allegations that may arise subsequent to favorable adjudicative action and require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position.

§ 275.4 Policy.

It is DoD policy that:

(a) Authorization of the customer to whom the financial records pertain shall be sought unless doing so compromises or harmfully delays either a legitimate law enforcement inquiry or a lawful intelligence activity. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by subpart B shall be utilized.

(b) The provisions of 12 U.S.C. Chapter 35 do not govern obtaining access to financial records maintained by military banking contractors located outside the United States, the District of Columbia, Guam, American Samoa, Puerto Rico, and the Virgin Islands. The guidance set forth in Appendix N of subpart B may be used to obtain financial information from these contractor operated facilities.

§ 275.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense shall:

(1) Exercise oversight to ensure compliance with this part.

(2) Provide policy guidance to affected DoD Components to implement this part.

(b) The Secretaries of the Military Departments and the Heads of the affected DoD Components shall:

(1) Implement policies and procedures to ensure implementation of this part when seeking access to financial records.

(2) Adhere to the guidance and procedures contained in this part.

Appendix A to Part 275—Obtaining Basic Identifying Account Information

A. A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

1. Name.
2. Address.
3. Account number.
4. Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

B. The notice (paragraph B of Appendix C to this part), challenge (paragraph D of Appendix C to this part), and transfer (paragraph B. of Appendix G to this part) requirements of this part shall not apply when a Government authority is seeking only the above specified basic identifying information concerning a customer's account.

C. A format for obtaining basic identifying account information is set forth in Appendix I to this part.

Appendix B to Part 275—Obtaining Customer Authorization

A. A DoD law enforcement office or personal security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

B. Any authorization obtained under paragraph A. of this appendix, shall:

1. Be in writing, signed, and dated.
2. Identify the particular financial records that are being disclosed.
3. State that the customer may revoke the authorization at any time before disclosure.
4. Specify the purposes for disclosure and to which Governmental authority the records may be disclosed.
5. Authorize the disclosure for a period not in excess of 3 months.
6. Contain a ''State of Customer Rights'' as required by 12 U.S.C. Chapter 35 (see Appendix J to this part).
7. Contain a Privacy Act Statement as required by 32 CFR part 310 for a personnel security investigation.

C. Any customer's authorization not containing all of the elements listed in paragraph B. of this appendix, shall be void. A customer authorization form, in a format set forth in Appendix J to this part, shall be used for this purpose.

D. A copy of the customer's authorization shall be made a part of the law enforcement or personnel security file where the financial records are maintained.

E. A certificate of compliance stating that the applicable requirements of 12 U.S.C. Chapter 35 have been met (Appendix M to this part), along with the customer's authorization, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

Appendix C to Part 275—Obtaining Access by Administrative or Judicial Subpoena or by Formal Written Request

A. Access to information contained in financial records from a financial institution may be obtained by Government authority when the nature of the records is reasonably described and the records are acquired by:

1. *Administrative Summons or Subpoena.*

a. Within the Department of Defense, the Inspector General, DoD, has the authority under the Inspector General Act to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summons or subpoenas for access to these records.

b. The Inspector General, DoD shall issue administrative subpoenas for access to financial records in accordance with established procedures but subject to the procedural requirements of this appendix.

2. *Judicial Subpoena.*

3. *Formal Written Request.*

a. Formal requests may only be used if an administrative summons or subpoena is not reasonably available to obtain the financial records.

b. A formal written request shall be in a format set forth in Appendix K to this part and shall:

1. State that the request is issued under 12 U.S.C. Chapter 35 and the DoD Component's implementation of this part.

2. Describe the specific records to be examined.

3. State that access is sought in connection with a legitimate law enforcement inquiry.

4. Describe the nature of the inquiry.

5. Be signed by the head of the law enforcement office or a designee.

B. A copy of the administrative or judicial subpoena or formal request, along with a notice specifying the nature of the law enforcement inquiry, shall be served on the person or mailed to the person's last known mailing address on or before the subpoena is served on the financial institution unless a delay of notice has been obtained under Appendix H of this part.

C. The notice to the customer shall be in a format similar to Appendix L to this part and shall be personally served at least 10 days or mailed at least 14 days prior to the date on which access is sought.

D. The customer shall have 10 days to challenge a notice request when personal service is made and 14 days when service is by mail.

E. No access to financial records shall be attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication of any challenge made.

F. The official who signs the customer notice shall be designated to receive any challenge from the customer.

G. When a customer fails to file a challenge to access to financial records within the above pertinent time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. Chapter 35. No access to any financial records shall be made before such certification (Appendix M to this part) is provided the financial institution.

Appendix D to Part 275—Obtaining Access By Search Warrant

A. A Government authority may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure.

B. Unless a delay of notice has been obtained under provisions of Appendix H to this part, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

''Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [DoD office or activity] on [date] for the following purpose: [state purpose]. You may have rights under the Right to Financial Privacy Act of 1978.''

C. In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search authorizations signed by installation commanders, military judges, or magistrates shall not be used to gain access to financial records.

Appendix E to Part 275—Obtaining Access for Foreign Intelligence, Foreign Counterintelligence, and International Terrorist Activities or Investigations

A. Financial records may be obtained from a financial institution (as identified at § 275.3) by an intelligence organization, as identified in DoD Directive 5240.1 [1], authorized to conduct intelligence activities, to include investigation or analyses related to international terrorism, pursuant to DoD Directive 5240.1 and Executive Order 12333.

B. The provisions of this part do not apply to the production and disclosure of financial records when requests are submitted by intelligence organizations except as may be required by this Appendix.

C. When a request for financial records is made under paragraph A. of this appendix, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence or foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of U.S.C. chapter 35. Such certification in a format similar to Appendix M to this part shall be made before obtaining any records.

D. An intelligence organization requesting financial records under paragraph A. of this appendix, may notify the financial institution from which records are sought 12 U.S.C. 3414(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in

E. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in which this access procedure was used.

Appendix F to Part 275—Obtaining Emergency Access

A. Except as provided in paragraphs B. and C. of this appendix, nothing in this part shall apply to a request for financial records from a financial institution when a determination is made that a delay in obtaining access to such records would create an imminent danger of:

1. Physical injury to any person.
2. Serious property damage.
3. Flight to avoid prosecution.

B. When access is made to financial records under paragraph A of this appendix, a Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

1. Certify in writing, in a format set forth in Appendix M to this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. chapter 35, as a prerequisite to obtaining access.

2. Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

C. When access to financial records are obtained under paragraph A. of this appendix, a copy of the request, along with the following notice, shall be served on the person or mailed to the person's last known mailing address as soon as practicable after the records have been obtained unless a delay of notice has been obtained under appendix H of this part.

''Records concerning your transactions held by the financial institution named in the attached request were obtained by [Agency or Department] under the Right to Financial Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds].''

Mailings under this paragraph shall be by certified or registered mail.

Appendix G to Part 275—Releasing Information Obtained From Financial Institutions

A. Financial records obtained under 12 U.S.C. chapter 35 shall be marked: ''This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another Federal Agency or Department without prior compliance with the transferring requirements of 12 U.S.C. 3412.''

B. Financial records obtained under this part shall not be transferred to another Agency or Department outside the Department of Defense unless the head of the transferring law enforcement office, personnel security element, or intelligence organization, or designee, certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity (to include investigation or analyses related to international terrorism) within the jurisdiction of the receiving Agency or Department. Such certificates shall be maintained with the DoD Component along with a copy of the released records.

C. Subject to paragraph D. of this appendix, unless a delay of customer notice has been obtained under Appendix H of this part, the law enforcement office or personnel security element shall, within 14 days, personally serve or mail to the customer, at his or her last known address, a copy of the certificate required by paragraph B., along with the following notice:

''Copies of or information contained in your financial records lawfully in possession of [name of Component] have been furnished to [name of Agency or Department] pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.''

D. If a request for release of information is from a Federal Agency, as identified in E.O. 12333, authorized to conduct foreign intelligence or foreign counterintelligence activities, the transferring DoD Component shall release the information without notifying the customer, unless permission to provide notification is given in writing by the requesting Agency.

E. Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence; precautions must be taken to ensure that:

1. The reports or correspondence are not distributed outside the Department of Defense except in compliance with paragraph B.; and

2. The report or other correspondence contains an appropriate warning restriction on the first page or cover. Such a warning could read as follows:

''Some of the information contained herein (cite specific paragraph) is financial record information which was obtained pursuant to the Right to Privacy Act of 1978, 12 U.S.C. 3401 et seq. This information may not be released to another Federal Agency or Department outside the Department of Defense except for those purposes expressly authorized by Act.''

Appendix H to Part 275—Procedures for Delay of Notice

A. The customer notice required when seeking an administrative subpoena or summons (paragraph B. of appendix C to this part), obtaining a search warrant (paragraph B. of appendix D to this part), seeking a judicial subpoena (paragraph B. to appendix

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

C to this part), making a formal written request (paragraph B. to appendix C to this part), obtaining emergency access (paragraph C. of appendix F to this part), or transferring information (paragraph C. of appendix G to this part), may be delayed for an initial period of 90 days and successive periods of 90 days. The notice required when obtaining a search warrant (paragraph B. of appendix D to this part) may be delayed for a period of 180 days and successive periods of 90 days. A delay of notice may only be made by an order of an appropriate court if the presiding judge or magistrate finds that:

1. The investigation is within the lawful jurisdiction of the Government authority seeking the records.

2. There is reason to believe the records being sought are relevant to a law enforcement inquiry.

3. There is reason to believe that serving the notice will result in:

a. Endangering the life or physical safety of any person.

b. Flight from prosecution.

c. Destruction of or tampering with evidence.

d. Intimidation of potential witnesses.

e. Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in paragraphs A.2.a. through A.2.d. of this appendix.

B. When a delay of notice is appropriate, legal counsel shall be consulted to obtain such a delay. Application for delays of notice shall be made with reasonable specificity.

C. Upon the expiration of a delay of notification obtained under paragraph A. of this appendix for a search warrant, the law enforcement office obtaining such records shall mail to the customer a copy of the search warrant, along with the following notice:

''Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [agency or department] on [date].

Notification was delayed beyond the statutory 180-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning [state with reasonable specificity]. You may have rights under the Right to Financial Privacy Act of 1978.''

D. Upon the expiration of all other delays of notification obtained under paragraph A. of this appendix, the customer shall be served with or mailed a copy of the legal process or formal request, together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry.

''Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of the court ordering the delay) under the Right to Financial Privacy Act of 1978 that such notice might (state the reason). The purpose of the investigation or official proceeding was (state the purpose).''

Appendix I to Part 275—Format for Obtaining Basic Identifying Account Information

[Official Letterhead]

[Date]

Mr./Mrs. XXXXXXXXXX
Chief Teller [as appropriate]
First National Bank
Anywhere, VA 00000–0000

Dear Mr./Mrs. XXXXXXXXXX

In connection with a legitimate law enforcement inquiry and pursuant to section 3413(g) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et. seq., you are requested to provide the following account information:

[Name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

I hereby certify, pursuant to section 3403(b) of the Right of Financial Privacy Act of 1978, that the provisions of the Act have been complied with as to this request for account information.

Under section 3417(c) of the Act, good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of the requested financial records.

[Official Signature Block]

Appendix J to Part 275—Format for Customer Authorization

Pursuant to section 3404(a) of the Right to Financial Privacy Act of 1978, I, [Name of customer], having read the explanation of my rights on the reverse side, hereby authorize the [Name and address of financial institution] to disclose these financial records: [List the particular financial records] to [DoD Component] for the following purpose(s): [Specify the purpose(s)].

I understand that the authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than three months from the date of my signature.

Signature: _____

Date: _____

[Typed name]
[Mailing address of customer]

Statement of Customer Rights Under the Right to Financial Privacy Act of 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a Federal Agency, certain procedures must be followed.

Authorization To Access Financial Records

You may be asked to authorize the financial institution to make your financial records available to the Government. You may withhold your authorization, and your authorization is not required as a condition of doing business with any financial institution. If you provide authorization, it can be revoked in writing at any time before your records are disclosed. Furthermore, any authorization you provide is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Authorization

Without your authorization, a Federal Agency that wants to see your financial records may do so ordinarily only by means of a lawful administrative subpoena or summons, search warrant, judicial subpoena, or formal written request for that purpose. Generally, the Federal Agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court.

The Federal Agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a Federal Agency's request.

Exceptions

In some circumstances, a Federal Agency may obtain financial information about you without advance notice or your authorization. In most of these cases, the Federal Agency will be required to go to court for permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will be notified that your records were obtained.

Transfer of Information

Generally, a Federal Agency that obtains your financial records is prohibited from transferring them to another Federal Agency unless it certifies in writing that the transfer is proper and sends a notice to you that your records have been sent to another Agency.

Penalties

If the Federal Agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

_____

(Last Name, First name, Middle Initial) Title (Area Code) (Telephone number)

_____

(Component activity, Local Mailing Address)

Appendix K to Part 275—Format for Formal Written Request

[Official Letterhead]

Mr./Mrs. XXXXXXXXXX
President (as appropriate)

City National Bank and Trust Company
Anytown, VA 00000–0000

Dear Mr./Mrs. XXXXXXXXX

In connection with a legitimate law enforcement inquiry and pursuant to section 3402(5) and section 3408 of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et. seq., and [cite Component's implementation of this Part], you are requested to provide the following account information pertaining to the subject:

[Describe the specific records to be examined]

The [DoD Component] is without authority to issue an administrative summons or subpoena for access to these financial records which are required for [Describe the nature or purpose of the inquiry].

A copy of this request was [personally served upon or mailed to the subject on [date] who has [10 or 14] days in which to challenge this request by filing an application in an appropriate United States District Court if the subject desires to do so.

Upon the expiration of the above mentioned time period and absent any filing or challenge by the subject, you will be furnished a certification certifying in writing that the applicable provisions of the Act have been complied with prior to obtaining the requested records. Upon your receipt of a Certificate of Compliance with the Right to Financial Privacy Act of 1978, you will be relieved of any possible liability to the subject in connection with the disclosure of the requested financial records.

[Official Signature Block]

Appendix L to Part 275—Format for Customer Notice for Administrative or Judicial Subpoena or for a Formal Written Request

[Official Letterhead]

[Date]

Mr./Ms. XXXXX X. XXXX
1500 N. Main Street
Anytown, VA 00000–0000

Dear Mr./Ms. XXXX:

Information or records concerning your transactions held by the financial institution named in the attached [administrative subpoena or summons] [judicial subpoena] [request] are being sought by the [Agency/Department] in accordance with the Right to Financial Privacy Act of 1978, Title 12, United States Code, Section 3401 et seq., and [Component's implementing document], for the following purpose(s):

[List the purpose(s)]

If you desire that such records or information not be made available, you must:

1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

[List applicable courts]

3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to: [Give title and address].

4. Be prepared to come to court and present your position in further detail.

5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of 10 days from the date of personal service or 14 days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

[Signature]
[Name and title of official]
[DoD Component]
[Telephone]

Attachments—3

1. Copy of request
2. Motion papers
3. Sworn statement

Appendix M to Part 275—Format for Certificate of Compliance With the Right to Financial Privacy Act of 1978

[Official Letterhead]

[Date]

Mr./Mrs. XXXXXXXXX
Manager
Army Federal Credit Union
Fort Anywhere, VA 00000–0000

Dear Mr./Mrs. XXXXXXXXX

I certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et. seq., that the applicable provisions of that statute have been complied with as to the [Customer's authorization, administrative subpoena or summons, search warrant, judicial subpoena, formal written request, emergency access, as applicable] presented on [date], for the following financial records of [customer's name]:

[Describe the specific records]

Pursuant to section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

[Official Signature Block]

Appendix N to Part 275—Obtaining Access to Financial Records Overseas

A. The provisions of 12 U.S.C. Chapter 35 do not govern obtaining access to financial records maintained by military banking contractors overseas or other financial institutions in offices located on DoD installations outside the United States, the District of Columbia, Guam, American Samoa, Puerto Rico, or the Virgin Islands.

B. Access to financial records held by such contractors or institutions is preferably obtained by customer authorization. However, in those cases where it would not be appropriate to obtain this authorization or where such authorization is refused and the financial institution is not otherwise willing to provide access to its records:

1. A law enforcement activity may seek access by the use of a search authorization issued pursuant to established Component procedures; Rule 315, Military Rules of Evidence (Part III, Manual for Courts-Martial); and Article 46 of the Uniform Code of Military Justice.

2. An intelligence organization may seek access pursuant to Procedure 7 of DoD 5240.1–R.

3. Information obtained under this appendix shall be properly identified as financial information and transferred only where an official need-to-know exists. Failure to identify or limit access in accordance with this paragraph does not render the information inadmissible in courts-martial or other proceedings.

4. Access to financial records maintained by all other financial institutions overseas by law enforcement activities shall be in accordance with the local foreign statutes or procedures governing such access.

Dated: April 27, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–4144 Filed 5–3–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–035]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Delaware City, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''6th Annual Escape from Fort Delaware Triathlon'', an event to be held June 10, 2006 on the waters of the Delaware River at Delaware City, DE. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Delaware River during the 6th Annual Escape from Fort Delaware Triathlon.

DATES: This rule is effective from 5:30 a.m. to 10:30 a.m. on June 10, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD05–06–

035) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Compliance and Inspection Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest because immediate action is necessary to protect those using the waterway. Because of the danger posed to the swimmers competing within a confined area, special local regulations are necessary to provide for the safety of event participants, support craft and other vessels transiting the event area. For the safety reasons noted, it is in the public interest to have these regulations in effect during the event. However advance notifications will be made to users of the waterway via marine information broadcasts, local notice to mariners, area newspapers and radio stations.

Background and Purpose

On June 10, 2006, the Escape from Fort Delaware Triathlon, Inc. will sponsor the ''6th Annual Escape from Fort Delaware Triathlon''. The swimming segment of the event will consist of approximately 500 swimmers competing across a one mile course along the Delaware River between Pea Patch Island and Delaware City, Delaware. The competition will begin at Pea Patch Island. The participants will swim across to the finish line located at the Delaware City Wharf, swimming approximately one mile, across Bulkhead Shoal Channel. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River between Fort Delaware on Pea Patch Island and the Delaware City Wharf at Delaware City, Delaware. The temporary special local regulations will be in effect from 5:30 a.m. to 10:30 a.m. on June 10, 2006. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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.

Although this regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Delaware River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 5:30 a.m. to 10:30 a.m. on June 10, 2006. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–035 to read as follows:

§ 100.35–T05–035, Delaware River, Delaware City, DE.

(a) *Regulated area.* The regulated area includes all waters of the Delaware River within 500 yards either side of a line drawn southwesterly from a point near the shoreline at Pea Patch Island, at latitude 39°35′08″ N, 075°34′18″ W, thence to latitude 39°34′43.6″ N, 075°35′13″ W, a position located near the Delaware City Wharf, Delaware City, DE. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement period. This section will be enforced from 5:30 a.m. to 10:30 a.m. on June 10, 2006.

Dated: April 21, 2006.

Larry L. Hereth,

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

[FR Doc. 06–4191 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–006]

RIN 1625–AA08

Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for

the ''Maryland Swim for Life'', held annually on the waters of the Chester River, near Chestertown, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Chester River and is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective June 5, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–06–006 and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspection and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 9, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD in the **Federal Register** (71 FR 6713). No letters were received commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On June 17, 2006, the Maryland Swim for Life Association will sponsor the ''Maryland Swim for Life'', an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. Approximately 100 swimmers start from Rolph's Wharf and swim up-river 2.5 miles then swim down-river returning back to Rolph's Wharf. A fleet of approximately 20 support vessels accompanies the swimmers. The regulations at 33 CFR 100.533 are effective annually for the Maryland Swim for Life marine event. Paragraph (d) of Section 100.533 establishes the enforcement date for the Maryland Swim for Life. This regulation changes the enforcement date from the second Saturday in July to the third Saturday in June each year. Notice of exact time, date and location will be published in the **Federal Register** prior to the event. The Maryland Swim for Life Association who is the sponsor for this event intends to hold it annually. To provide for the safety of participants and support vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the swim.

Discussion of Comments and Changes

No comments were received in response to our notice of proposed rulemaking and accordingly no changes have been made to the regulatory text.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this action merely establishes the dates on which the existing regulations would be in effect and would not impose any new restrictions on vessel traffic.

Although this regulation prevents traffic from transiting a portion of the Chester River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Chester River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule merely establishes the dates on which the existing regulations would be in effect of the regulated area and would not impose any new restrictions on vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 100.533, revise paragraph (d) to read as follows:

§ 100.533 Maryland Swim for Life, Chester River, Chestertown, Maryland.

* * * * *

(d) *Enforcement period.* (1) This section will be enforced annually on the third Saturday in June. A notice of enforcement of this section will be published annually in the **Federal Register** and disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event dates and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

(2) For 2006, this section will be enforced from 6:30 a.m. to 1:30 p.m. on June 17, 2006.

Dated: April 14, 2006.

Larry L. Hereth,

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

[FR Doc. 06–4190 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–038]

RIN 1625–AA08

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.530 for the ''Thunder on the Narrows'' boat races, a marine event to be held August 5 and August 6, 2006, on the waters of Prospect Bay, near Kent Island Narrows, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: *Effective Dates:* 33 CFR 100.530 will be enforced from 9:30 a.m. to 6:30 p.m. on August 5 and 6, 2006.

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

SUPPLEMENTARY INFORMATION: On August 5 and August 6, 2006, the Kent Narrows Racing Association will sponsor the ''Thunder on the Narrows'' powerboat races, on Prospect Bay, near Kent Island Narrows, Maryland. The event will consist of approximately 75 hydroplanes and jersey speed skiffs racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is expected to gather near the event site to view the race. In

order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.530 will be enforced for the duration of the event. Under provisions of 33 CFR 100.530, from 9:30 a.m. to 6:30 p.m. on August 5 and 6, 2006, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

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

Dated: April 14, 2006.

Larry L. Hereth,

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

[FR Doc. 06–4203 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–066]

RIN 1625–AA00

Safety Zone; San Carlos Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida in the vicinity of the Sanibel Island Bridge span ''A'' while bridge construction is conducted. This rule is necessary to ensure the safety of the construction workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 5 a.m. on April 12 through 4 p.m. on May 10, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–066] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waterways Management Division at Coast Guard Sector St. Petersburg (813) 228–2191 Ext 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The information for the bridge construction was not given with sufficient time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the construction workers and mariners transiting the area. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard or local law enforcement vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

Boh Brothers Construction will be pouring concrete for the new bridge columns on the west side of Sanibel Island Bridge ''A'' span. The concrete pour will take place in two phases on two different days. The first phase will consist of pouring the bottom half of the columns. Phase one is scheduled to take place on April 12, 2006, from 5 a.m. until 4 p.m. Phase two will involve pouring the top half of the columns. Phase two is tentatively scheduled to occur on April 27, from 5 a.m. until 4 p.m. The operation will require a 50 foot by 120 foot barge to be positioned in the center of the channel along with a tug and working skiffs. The nature of this work and the close proximity of the channel present a hazard to mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone encompasses the following waters of San Carlos Bay, Florida: All waters from surface to bottom, within a 400 foot radius of the following coordinates: 26°28′59″N, 082°00′52″W. Vessels and persons are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port St. Petersburg or his designated representative. The zone is effective from 5 a.m. on April 12 through 4 p.m. on May 10, 2006. The aforementioned safety zone enforcement dates may change due to environmental factors. Coast Guard Sector St. Petersburg will give notice of the enforcement of the safety zone by issuing a Broadcast Notice to Mariners beginning 24 to 48 hours prior to beginning the operation. On-scene notice will be provided by local Coast Guard and local law enforcement marine units enforcing the safety zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The rule will only be enforced for a limited amount of time. Moreover, vessels may still enter the safety zone with the express permission of the Captain of the Port St. Petersburg or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit near the Sanibel Island Bridge span ''A'' from 5 a.m. on April 12 through 4 p.m. on May 10, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for a limited time when marine traffic is expected to be minimal. Additionally, traffic will be allowed to

enter the zone with the permission of the Captain of the Port St. Petersburg or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we 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. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary section 165.T07–066 is added to read as follows:

§ 165.T07–066 Safety Zone; Ft. Myers Beach, Florida.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida, in the vicinity of the Sanibel Island Bridge span ''A'', that includes all the waters from surface to bottom, within a 400 foot radius of the following coordinates: 26°28′59″ N, 082°00′52″ W. All coordinates referenced use datum: NAD 83.

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

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the Regulated Area without the prior permission of the Captain of the Port St. Petersburg, Florida, or his designated representative.

(d) *Date.* This rule is effective from 5 a.m. on April 12 through 4 p.m. on May 10, 2006 and will be enforced when concrete pouring operations are taking place.

Dated: April 12, 2006.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg, Florida.

[FR Doc. 06–4189 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD21

Gulf Islands National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates areas where personal watercraft (PWC) may be used in Gulf Islands National Seashore, Florida and Mississippi. This final rule implements the provisions of the National Park Service (NPS) general regulations authorizing parks to allow the use of PWC by promulgating a special regulation. Individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: *Effective Date:* This rule is effective May 4, 2006.

ADDRESSES: Mail inquiries to Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563. E-mail: *Jerry_Eubanks@nps.gov*, 850–934–2604.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

Description of Gulf Islands National Seashore

Gulf Islands National Seashore is located in the northeastern portion of the Gulf of Mexico and includes a widely spaced chain of barrier islands extending nearly 160 miles from the eastern end of Santa Rosa Island in Florida to Cat Island in Mississippi. Other islands in the national seashore include Horn, Petit Bois, and East Ship and West Ship islands in Mississippi and a section of Perdido Key in Florida. Gulf Islands National Seashore also includes mainland tracts at Pensacola Forts and Naval Live Oaks Reservation near Pensacola, Florida, and Davis Bayou, adjacent to Ocean Springs, Mississippi. The national seashore contains 139,775.46 acres within the authorized boundary, excluding Cat Island (only a portion has been acquired as of this date). Of this total acreage, 19,445.46 acres are fastlands (above water) and 119,730 acres are submerged lands.

Gulf Islands National Seashore contains snowy-white beaches, sparkling blue waters, fertile coastal marshes, and dense maritime forests. Visitors can explore 19th century forts, enjoy shaded picnic areas, hike on winding nature trails, and camp in comfortable campgrounds. In addition, Horn and Petit Bois islands located in Mississippi are federally designated wilderness areas. Nature, history, and recreational opportunities abound in this national treasure. All areas of Gulf Islands National Seashore in the Florida District and the Davis Bayou area in the Mississippi District are reachable from Interstate 10. The Mississippi District barrier islands are only accessible by boat.

Purpose of Gulf Islands National Seashore

Gulf Islands National Seashore, Florida and Mississippi, was authorized by Act of Congress, Public Law 91–660, January 8, 1971, to provide for recognition of certain historic values such as coastal fortifications and other purposes such as the preservation and enjoyment of undeveloped barrier islands and beaches.

Gulf Islands National Seashore conserves certain outstanding natural, cultural and recreational resources along the Northern Gulf Coast of Florida and Mississippi. These include several coastal defense forts spanning more than two centuries of military activity, historic and prehistoric archaeological sites, and pristine examples of intact Mississippi coastal barrier islands, salt marshes, bayous, submerged grass beds, complex terrestrial communities, emerald green water, and white sand beaches.

Gulf Islands National Seashore was established for the following purposes:

- Preserve for public use and enjoyment certain areas possessing outstanding natural, historic, and recreational values.
- Conserve and manage the wildlife and natural resources.
- Preserve as wilderness any area within the national seashore found to be suitable and so designated in accordance with the provisions of the Wilderness Act (78 Stat. 890).
- Recognize, preserve, and interpret the national historic significance of Fort Barrancas Water Battery (Battery San Antonio), Fort Barrancas; Advanced Redoubt of Fort Barrancas at Pensacola Naval Station; Fort Pickens on Santa Rosa Island, Florida; Fort McRee site, Perdido Key, Florida; and Fort Massachusetts on West Ship Island, Mississippi, in accordance with the Act of August 21, 1935 (49 Stat. 666). That act states: ''It is a National policy to preserve for public use historic sites, buildings, and objects of National significance for inspiration and benefits of the people of the United States.''

Significance of Gulf Islands National Seashore

Gulf Islands National Seashore is significant for the following reasons:

- Nationally significant historical coastal defense forts representing a continuum of development.
- Several mostly undisturbed, natural areas in close proximity to major population centers.
- Areas of natural significant high quality beaches, dunes, and water resources.
- Endangered species occur in several areas.
- Contains regionally important prehistoric archaeological sites.
- Provides outstanding controlled areas conducive to the successful reintroduction of native threatened and endangered species.
- Provides habitat for early life stages of many coastal and marine flora and fauna of commercial and recreational importance.
- Provides a benchmark to compare environmental conditions in developed areas of the Gulf Coast.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *''

16 U.S.C. 1a–1 states, ''The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *''

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *'' (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136; July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Gulf Islands National Seashore

Personal watercraft use emerged at Gulf Islands National Seashore in the 1980s. Although PWC use was a small percentage of total boat use within the national seashore, park staff believes that use had increased over the five years prior to the closure. If reinstated, PWC use at the national seashore is not expected to decrease. In fact, an increase in usage would be expected as more residents purchase personal watercraft and tourism continues to grow.

Prior to the closure to personal watercraft in April 2002, personal watercraft were recognized as a Class A motorboat and were treated as any other such vessel. All regulations that apply to any registered vessel operating in waters of Florida and Mississippi that are regulated by the NPS applied to personal watercraft.

Personal watercraft were permitted throughout the national seashore, except as follows: no motorized vessels are permitted above the mean high tide line on the designated wilderness islands of Horn and Petit Bois; the lakes, ponds, lagoons and inlets of East Ship Island, West Ship Island, Horn Island, Petit Bois Island, and Cat Island (lands under NPS management) are closed to the use of motorized vessels; the lagoons of Perdido Key within Big Lagoon are closed to all combustion engines; and the areas 200 feet from the remnants of the old fishing pier and 200 feet from the new fishing pier at Fort Pickens are closed to all boating operations. There are also seasonal closures to watercraft to protect nesting shorebirds and other sensitive wildlife and relict dunes.

Perdido Key in Florida and East Ship and West Ship islands in Mississippi have the most concentrated boating use within the national seashore. Many area residents in both States have boat docks and own boats or personal watercraft, and visit the national seashore.

Florida District. In Florida, the park is situated between the Gulf of Mexico and the Pensacola Bay system. Although the Gulf offers almost unlimited area for personal watercraft use, most operation occurs within the bay. In 2000, personal watercraft comprised 12.5% of all registered vessels statewide. In the Florida District of the park, it is estimated that personal watercraft comprised 0.5% of recreational boating. Personal watercraft traversed along the north shoreline of Santa Rosa Island while very few traversed the south, or Gulf, shoreline. In general, PWC usage within the Florida District of the park was concentrated in the Perdido Key area. During the summer months, most areas of PWC use consisted of 6 or 7 personal watercraft per month, while on a peak-use day PWC activity in the Perdido Key area might have comprised 25 personal watercraft. The reason for the higher use in the Perdido Key area is the sheltered nature of the area and the proximity to residences with launching facilities.

Mississippi District. The Mississippi portion of the park separates the Gulf of Mexico from the Mississippi Sound. Personal watercraft account for 6% of the registered boats in Mississippi, and it is estimated that they comprised approximately 4% of recreational boating in the Mississippi District of the park. The islands are situated between 6 to 14 miles from the mainland, weather conditions can change quickly, and large ships use the intracoastal waterway shipping channels. These factors combined to limit PWC use in the Mississippi District as transportation to the islands, and use of Gulfside waters was almost nonexistent except immediately adjacent to the islands. Observations of PWC use indicate that they were mainly used for recreational riding and not for transportation. Most personal watercraft used in the Mississippi District of the park were towed by larger boats from the Pascagoula/Biloxi/Gulfport, Mississippi, area. The primary use season reflects overall visitation patterns, with use decreasing during the winter months.

PWC use areas are similar to general motorboat use areas. Personal watercraft were concentrated mostly on the east and west tips of the islands, around the West Ship Island Pier, and the entire north side of Spoil Island.

NPRM and Environmental Assessment

On March 17, 2005, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Gulf Islands National Seashore (70 FR 12988). The proposed rule for PWC use was based on alternative B (one of three alternatives considered) in the Environmental Assessment (EA) prepared by NPS for Gulf Islands National Seashore. The EA was open for public review and comment from April 19, 2004 to May 18, 2004. Copies of the EA may be downloaded at *http://www.nps.gov/ guis/pphtml/documents.html* or obtained at park headquarters Monday through Friday, 8 a.m. to 4:30 p.m. Mail inquiries should be directed to park headquarters: Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at Gulf Islands to ensure the protection of park resources and values, while offering recreational opportunities as provided for in the National Seashore's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. The EA evaluated three alternatives concerning the use of personal watercraft at Gulf Islands:

- The no-action alternative would continue the prohibition of PWC use in Gulf Islands National Seashore. No special rule would be promulgated.
- Alternative A would reinstate PWC use under a special NPS regulation as previously managed.
- Alternative B would reinstate PWC use under a special NPS regulation with additional management prescriptions.

Based on the environmental analysis prepared for PWC use at Gulf Islands, and after considering the comments received, as discussed below, the NPS considers alternative B the environmentally preferred alternative because it best fulfills park responsibilities as trustee of this sensitive habitat; ensures safe and healthy, productive, and aesthetically and culturally pleasing surroundings; and attains a wider range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

This document contains regulations to implement alternative B at Gulf Islands National Seashore.

Summary of Comments

A proposed rule was published in the **Federal Register** for public comment on March 17, 2005 with the comment period lasting until May 16, 2005 (70 FR 12988). The National Park Service received 4,516 timely written responses regarding the proposed regulation and EA. Of the responses, 4,394 were form letters in 3 different formats, and 122 were separate letters. Of the 122 separate letters, 98 were from individuals, 10 from organizations, 5 from government agencies, 2 from Indian Tribes, and 7 from members of State legislatures and the U.S. Congress. Within the following discussion, the term ''commenter'' refers to an individual, organization, or public agency that responded. The term ''comments'' refers to statements made by a commenter.

General Comments

1. One commenter stated that the environmental assessment (EA) failed to use the best data available and picked alternative B without adequate scientific justification.

NPS Response: Where data was lacking, best professional judgment prevailed, using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff. The NPS believes that the EA is in full compliance with the court-ordered settlement and that the Finding of No Significant Impact (FONSI) shows that alternative B (reinstate PWC use with additional management prescriptions) is the preferred alternative and that the decision has been adequately analyzed and explained.

2. Several commenters stated that by allowing damaging PWC use on park waters the NPS violates its mandate to fully protect park resources.

NPS Response: No part of the settlement agreement or NPS analysis of PWC use has violated or overturned Gulf Islands National Seashore's enabling legislation. Both the personal watercraft settlement agreement and the authorizing legislation for Gulf Islands were considered when developing alternatives for the EA. The objective of the EA, as described in the ''Purpose and Need'' chapter, was derived from the enabling legislation for Gulf Islands. As further stated in that chapter, a special analysis on the management of personal watercraft was also provided under each alternative to meet the terms of the settlement agreement between Bluewater Network and the National Park Service.

As a result, the alternatives presented in the EA would protect resources and values while providing recreational opportunities at Gulf Islands. As required by NPS policies, the impacts associated with personal watercraft and other recreational uses are evaluated under each alternative to determine the potential for impairment to park resources. The NPS finds that the preferred alternative (alternative B) will not result in impairment of park resources and values for which Gulf Islands National Seashore was established.

3. One commenter stated that PWC usage, even with restrictions, will negatively impact the natural experience of Florida National Scenic Trail users and compromise the Certification Agreement between the Gulf Islands National Seashore, the USDA Forest Service, and the Florida Trail Association.

NPS Response: Under alternative B, the preferred alternative, as implemented in this final rule, a flat wake zone will be established 300 yards from all park shorelines at the low-water mark, with more stringent restrictions at West Ship Island Pier and around designated wilderness boundaries. This restriction should be sufficient in minimizing the disturbance to land-based recreational users, including trail users.

4. One commenter stated that the EA underestimated the PWC population in its analysis, and that the National Marine Manufacturers Association Web site was incorrectly quoted.

NPS Response: A check of the NMMA Web site revealed that indeed, PWC numbers for the years 2000 and 2001 are higher than quoted in the EA (1.24 million for 2000 and 1.29 million for 2001). However, the numbers were underestimated by approximately 23 percent for 2001, not 30 percent as the comment indicates.

Regardless, these are nationwide PWC numbers that were not used in the impacts analysis. The numbers used in the impacts analysis were park-specific, based on available visitor data for each district and observations by Gulf Islands National Seashore staff.

5. Several commenters stated that alternative B is in direct conflict with Florida law, which expressly prohibits discriminatory regulation of PWC.

NPS Response: The National Park Service has the authority to regulate maritime activities within Gulf Islands National Seashore boundaries. Although the NPS will seek to work cooperatively with state entities on vessel management, the National Park Service does not relinquish the authority to regulate activities that occur in NPS waters and that impact national seashore resources.

6. Several commenters stated that the EA fails to meet the requirements of NEPA because a reasonable range of alternatives was not evaluated. The park should have considered an alternative that better protects park wilderness values, water resources, and areas that were damaged by Hurricane Ivan.

NPS Response: The NPS believes a reasonable range of alternatives was evaluated, including an alternative that would reinstate PWC use as previously managed (alternative A), an alternative that would continue the PWC ban (no-action alternative), and the preferred alternative (alternative B), which will reinstate PWC use with additional management restrictions, such as additional flat wake zones. After

analyses were done for every applicable impact topic with the best available data and input from the public was analyzed, Gulf Islands selected alternative B as its preferred alternative. Alternative B will allow PWC to use the majority of park waters, while still providing resource protection.

With regard to the wilderness areas, the park considered closing specific areas and designated beach access points, but ultimately determined that park resources and values would be protected with additional flat wake zone areas. PWC operating at a flat wake speed in the 0.5 mile flat wake zone around the wilderness areas would create the same amount, or perhaps less, noise than other watercraft that are also allowed near the wilderness areas.

With regard to keeping PWC farther away from fragile areas where pollutants can collect, within all areas of the park, collection of pollutants from PWC should be minimal under the final rule for the following reasons: Use is relatively low in all areas of the park; the flat wake speed zone areas will reduce the amount of pollutants emitted; and the bodies of water within the park are not closed and are subject to regular flushing. Hurricane Ivan had not occurred at the time the EA was written, but the impacts from PWC operating at flat wake speeds would probably not have a large impact on resources damaged by hurricanes. Through the Superintendent's Compendium, the park has the option of temporarily closing areas to all vessels if necessary to protect damaged resources.

7. Several commenters stated that the proposed restrictions under alternative B discriminate against PWC because alternative B regulates PWC use at Gulf Islands more restrictively than other motorized vessels without any reasonable justification.

NPS Response: It appears that PWC are being discriminated against but the prohibition from traveling above a flat wake speed for PWCs within 300 yards of the shoreline essentially equals the playing field for all vessels. Shallow, uneven bottom lands within 300 yards of most shorelines severely restrict vessels other than PWC from traveling at high speeds. These shallow waters in effect create a self-imposed speed restriction for all other vessels while PWCs were still able to travel at high speeds. Within 300 yards of shore you will find submerged aquatic vegetation (seagrass beds) and aquatic fauna. The jet engine thrust from a PWC running at high speeds through the shallow waters will likely impact these aquatic species. Also PWC traveling above a flat wake speed in these shallow near shore waters creates a potential for conflict and a safety concern for water sports enthusiast that may be restricted to these shallow waters and for fisherman traversing at slow speeds or at anchor.

Though these rules were developed specifically to regulate PWC use, the park realizes and appreciates that an appearance of discrimination exists between PWC and other vessels and that there may be a need for rulemaking to regulate vessels other than PWC in similar ways we are managing PWC. The park is committed to working toward rulemaking that will correct these differences.

8. One commenter was concerned that the current EA is being politically manipulated in order to reauthorize PWC operation and that the EA has made a 180 degree turn from the 2001 determination.

NPS Response: Due to the increased level of public comment and congressional interest, Gulf Islands reanalyzed the issues and impact topics described in the 2001 determination in more detail in the EA. The results of the in-depth analysis in the EA indicated that impacts would range from negligible to moderate for all impact topics, and chose alternative B as the preferred alternative.

9. One commenter stated that the proposed rule should be rejected because it unfairly limits PWC use and that the short- and long-term impacts of alternatives A and B are essentially identical.

NPS Response: The enabling legislation that established Gulf Islands National Seashore in 1971 states that the park was established ''In order to preserve for public use and enjoyment certain areas possessing outstanding natural, historic and recreational values. * * *'' The preferred alternative meets this legislation and the objectives of the national seashore to a large degree, as well as meeting the purpose and need for action, and therefore is within the legislative and regulatory duties of Gulf Islands National Seashore. NPS agrees that PWC use will neither impair nor significantly impact park resources. Impacts differ between alternative A and B for soundscapes, shoreline and submerged aquatic vegetation, wildlife and wildlife habitat, aquatic fauna, visitor use and experience, and visitor conflicts and safety. The EA provides sufficient justification for why alternative B (Reinstate PWC Use Under a Special Regulation with Additional Management Prescriptions) was chosen as the preferred alternative. Alternative B provides additional restrictions that are necessary for resource protection, and its selection is not arbitrary or capricious.

10. Mississippi Senator William G. Hewes III commented that allowing PWC in certain areas where boats are already prevalent is a better option than banning them outright.

NPS Response: Under this final rule, PWC use will be reinstated with additional management prescriptions to protect natural and cultural resources, to mitigate PWC safety concerns, to provide for visitor health and safety, and to enhance overall visitor experience. As part of this final rule, flat wake zones will be established in various locations within the national seashore.

11. One commenter suggested the placement of buoys along the coastline to delineate the flat wake zones.

NPS Response: The seashore has over 100 miles of shoreline. Placement of buoys throughout the entire park would not be feasible due to cost and maintenance, and the buoys would be confusing to most operators. The park believes that through education and enforcement, such delineation will not be necessary. Where it is shown that education or enforcement do not result in compliance, buoys could be placed as a temporary measure. The limits of the flat wake zones offer an envelope large enough to allow the prudent operator and enforcement officer to recognize when gross violation may be occurring.

12. One commenter is concerned that the prohibition of PWC within 200 feet of non-motorized vessels and people in the water will eliminate PWC use for legitimate and accepted recreational activities, such as towing and water sports.

NPS Response: Towing of waterskiers is allowed so long as the activity does not significantly impact natural resources or create potentially hazardous situations. The final rule will not preclude towing or water sports, but will control PWC speeds in portions of Seashore waters. The intent of the 200′ prohibition would apply to operating near swimmers, divers, fisherman, or non-motorized vessels that may be in or on the water, and are not affiliated with the PWC. Examples of times when the 200′ prohibition would not apply are as follows: A passenger, intended passenger or skier associated with the PWC who may be skiing, wading or waiting in the water to be picked up by the PWC. A water skier may not ski within the flat wake zone.

13. Several members of the Mississippi legislature and U.S. Congress stated that PWC should be allowed within Gulf Islands National

Seashore and that they should not be discriminated against.

NPS Response: The EA analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives. As a result of this analysis, it was determined that the management prescriptions under alternative B, Reinstate PWC Use with Additional Management Prescriptions, would best protect natural and cultural resources, mitigate PWC safety concerns, provide for visitor health and safety, and enhance overall visitor experience.

14. One commenter suggested that a 100-yard flat wake zone be established for all motorized craft within park waters. Several commenters suggested that a 300-yard flat wake zone be established for all motorized craft within park waters, as the Final Rule governing PWC use in the Lake Mead National Recreation Area reflects. The U.S. Coast Guard and the National Association of State Boating Law Administrators have recommended a policy that requires uniform application of flat wake zones to all motorized vessels.

NPS Response: As described under the ''Scope of the Analysis'' in the ''Purpose and Need'' section of the EA, the focus of the EA is to define management alternatives specific to PWC use. The plan analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives. The goal of the EA was not to determine if these restrictions should also apply to boats. That analysis must be completed as part of a separate EA. Gulf Islands National Seashore will consider subsequent rulemaking to address the issue of flat wake zones for other watercraft.

15. One commenter stated that the EA reaches many conclusions regarding the impact of PWC upon Gulf Islands National Seashore resources and wildlife that are directly contradicted by the 2001 Determination, specifically regarding visitor conflicts and complaints from PWC.

NPS Response: No documented complaints have been received by the public regarding PWC. In addition, no comments were received about PWC in the annual visitor surveys over the last four years.

Comments Regarding Water Quality

16. One commenter stated that there is no requirement that people use lower emission engines, so there is no legitimate basis for the assumption regarding cumulative impacts. In addition, the amount of emissions from PWC compared to cumulative emissions from all motorized watercraft is very high, considering the percentage of recreational boaters who use PWC is only 0.5.

NPS Response: Impact estimates for personal watercraft and other motorboats have been revised in the errata to more correctly reflect impacts to water quality as discussed on pages 107–125 of the EA. Based on these revised impact estimates, personal watercraft contribute up to 29 percent of the total pollutants to water in 2002 and up to 42 percent of the total pollutants in 2012, depending on the district (Florida or Mississippi) and the area within the district. While personal watercraft constitute fewer than 1 percent of the motorboats in the Florida District and 4 percent in the Mississippi District, they typically operate for much longer periods of time than other motorboats.

17. One commenter stated that the analysis represents an outdated look at potential emissions from an overstated PWC population of conventional two-stroke engines, and underestimated the accelerating changeover to four-stroke and newer two-stroke engines. The net effect is that the analysis overestimates potential PWC hydrocarbon emissions, including benzene and Polycyclic Aromatic Hydrocarbons (PAHs), to the water. In addition, the water quality analysis uses assumptions that result in overestimation of potential PWC hydrocarbon emission to the water. For example, the analysis states that benzo(a)pyrene concentrations in gasoline can be ''up to 2.8 mg/kg.''

NPS Response: The estimates of personal watercraft use and emissions are based on the best information available at the time of preparation of the EA and are meant to be conservative (i.e., protective of the environment). By using conservative input assumptions in estimating impact to water quality, the probability of underestimating impacts is minimized.

The evaporation rate for benzene—half-life of approximately 5 hours at 25 °C—is based on information presented by the United States Environmental Protection Agency (USEPA) and Verschuren (see EA). Because impacts to water quality were determined to be negligible before any discussion or application of this evaporation rate, it was not discussed in the impact assessments of the alternatives.

As stated in Appendix A of the EA, the concentration of benzo(a)pyrene can be up to 2.8 mg/kg (or 2.07 mg/L). Because this concentration could be found in the gasoline used in Gulf Islands, this measure was used to be protective of the environment. It is not an unrealistic assumption.

Annual sales of personal watercraft (200,000 units) are mentioned on page 7 of the EA. However, the text directs the reader to Table 1, which shows that ownership declined after 1995. The discussion of national trends is not germane to the estimate of PWC use in the seashore since the numbers of personal watercraft and hours of use are based on observations by park staff (see page 109 of the EA).

In summary, if changes in evaporation rates, concentrations of gasoline constituents, sales of personal watercraft, and rates of replacement of older personal watercraft were made, as suggested, the conclusions of negligible impacts from personal watercraft would not change. However, these conclusions would no longer be considered as conservative (protective of the environment) and could be challenged by other parties.

18. One commenter questioned the assertion that PWC will be responsible for 50 percent of the cumulative boating hours, since PWC emissions are declining at a faster rate than the NPS and the USEPA presume.

NPS Response: Risk estimates for personal watercraft and other motorboats have been revised to more correctly reflect impacts to water quality. Impacts to water quality from PWC use in both districts and in both years evaluated (2002 and 2012) are still negligible despite these recalculations.

Emission rates for personal watercraft were taken from data presented in NPS, California Air Resources Board (CARB), and Bluewater Network (see page 107 of the EA), and the rate of decrease taken from data presented by the USEPA in 1996 and 1997. These rates may be higher than more recent estimates, but they are conservative and are meant to be protective of the environment. Even with these conservative emission rates, impacts to water quality from personal watercraft are expected to be negligible.

The percentage of contributions from personal watercraft may appear disproportionate to the number of PWC versus other motorboats, but personal watercraft are typically operated for longer periods of time than other motorboats in both districts of the park.

Projections of PWC emissions in 2012 indicate that they will increase from 2002 due to the increased number of personal watercraft (for example, see revised Tables 30 and 32 in the Errata). As seen in Table 23 of the EA, the numbers of personal watercraft will increase at an annual rate of 9.6 percent,

or a 250 percent increase over 10 years. In contrast, other motorboats are expected to increase at a slower annual rate of 3.7 percent, or a 144 percent increase over 10 years. Consequently, the proportion of emissions from personal watercraft is expected to increase from 2002 to 2012—personal watercraft would contribute up to 29 percent of the total pollutants to water in 2002 and up to 42 percent of the total pollutants in 2012, depending on the district (Florida or Mississippi) and the area within the district. Personal watercraft would not be responsible for a decreasing percentage of emissions as posited in the comment.

19. One commenter stated that studies have shown that two-cycle engine emissions did not have a huge effect on the marine environment because any fuel that mixes with water swiftly evaporated. The amount of unburned fuel that does pass through two-cycle engines is in a gaseous state and is superheated by the combustion process.

NPS Response: Without a citation in the comment, it is difficult to examine these assertions. However, the California Air Resources Board (CARB 1999) states that a PWC operated for 7 hours emits more smog-forming emissions than a 1998 passenger car driven 100,000 miles (161,000 km). This CARB emission estimate is roughly one-fifth the rate in the comment. Other estimates of fuel emission rates range between 1.5 and 4.5 gallons/hour (National Park Service 1999; Personal Watercraft Illustrated *In*: Bluewater Network 2001). For the purpose of estimating impacts to water quality and air quality in the Gulf Islands EA, it was assumed that PWC with two-cycle engines discharge fuel at a rate of 3 gallons/hour. Regarding evaporation of fuel, in the EA (page 111), the evaporation rate of benzene (half life of approximately 5 hours; USEPA 2001) is factored into the water quality impact assessment.

Comments Regarding Air Quality

20. One commenter stated that the analysis does not properly account for the rapid engine conversion that is occurring due to the phase-in of cleaner running engine technologies.

NPS Response: A conservative approach was used in the analysis, since the number of PWC already converted to four-stroke engines is not known. In addition, the USEPA model takes into account the reduction in emissions over time. Even with the conservative approach, the analysis for alternative B presented in the EA indicates that PWC use at Gulf Islands National Seashore would result in negligible impacts to air quality.

21. One commenter stated that continued PWC operation will contribute major, not moderate, damage to the area's air quality, and that over the next ten years, the NPS estimates that eliminating PWC will reduce carbon monoxide (CO) emissions by more than 50 tons.

NPS Response: The definition of major air quality impact on page 130 of the EA is:

- Emissions levels would be greater than or equal to 250 tons/year for any pollutant, and
- The first highest 3-year maximum for each pollutant is greater than NAAQS [National Ambient Air Quality Standards].

The annual emissions of CO for personal watercraft and other motorized boats in the Florida District (Table 42 of the EA) would be 563.6 tons in 2002 and 908.5 tons in 2012. The cumulative emissions are correctly termed ''moderate'' because, as described on page 133 of the EA, ''* * * moderate [adverse impacts] for CO and hydrocarbons (HC) based on the quantities of emissions and maximum pollutant levels that are less than the NAAQS.'' NAAQS (concentrations) are defined as 9 parts per million (ppm) over 8 hours and 35 ppm over 1 hour. Of the cumulative emissions, personal watercraft would contribute only 9.0 tons in 2002 and 17.9 tons in 2012 (Table 40 of the EA). These PWC emissions are considerably lower than 50 tons/year and are, therefore, negligible. The comment is correct in that eliminating personal watercraft would improve air quality at the seashore (Florida and Mississippi districts) by reducing CO emissions by an estimated 56.5 tons/year. However, impacts would be moderate.

22. One commenter expressed concern that PWC emissions were declining faster than forecasted by the USEPA. As the Sierra Report documents, in 2002, hydrocarbons (HC) plus nitrogen oxides (NO_X) emissions from the existing fleet of PWC were already 23% lower than they were before the USEPA regulations became effective, and will achieve reductions greater than 80% by 2012.

NPS Response: The U.S. Environmental Protection Agency's (USEPA) data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that the Sierra Research data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the USEPA's NONROAD Model, which was used to estimate emissions. However, the level of detail included in the Sierra Research report was not carried into the EA for reasons of consistency and conformance with the model predictions. Most states use the USEPA's NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with state programs and with the methods of analysis used for other similar NPS assessments, the NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the Sierra Research report provides data on ''worst case'' scenarios. However worst case or short-term scenarios were not analyzed for air quality impacts in this or other NPS PWC EAs.

It is also agreed that the relative quantity of HC plus NO_X are a very small proportion of the county-based emissions, and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

California Air Resources Board (CARB) certified PWCs may be used; however, the degree of certainty of overall use of this engine type nationwide is not well established. For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 S.I. Engine Rule, which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be in the conservative range, if compared to actual emissions.

23. One commenter stated that improved engine technology would actually cause an increase in NO_X emissions, a precursor for ground level ozone. Ozone has been a problem for Pensacola in the past, although it is in attainment at this time.

NPS Response: The comment is correct in its assertion that ''improved engines'' would result in an increase in NO_X emissions. According to data presented in CARB (2001), the carbureted two-stroke engines in personal watercraft and outboard motors had lower NO_X emissions (12–20 grams/test) than either the two-stroke direct injection engines (102–128 grams/test) or the four-stroke engines (230–4226 grams/test). The impact thresholds described on page 130 of the EA, including ''impairment,'' are based on measurable parameters, whereas a standard of degradation, as suggested, could not be pragmatically applied in the impact analyses.

24. One commenter stated that the Lake Mead National Recreation Area's proposed PWC rule stated that PAH concentrations derived from modeling conducted by Sierra Research were orders of magnitude below the permissible exposure limits established by the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). A proper PAH analysis refutes claims by PWC opponents that PAH emissions from PWC operating in the Gulf Islands National Seashore will endanger human health.

NPS Response: The criteria for analysis of impacts from PWC to human health are based on the NAAQSs for criteria pollutants, as established by the USEPA under the Clean Air Act (CAA), and on criteria pollutant annual emission levels. This methodology was selected to assess air quality impacts for all NPS PWC EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of total hydrocarbons (THC), which are assessed because they are the focus of the USEPA's emissions standards directed at manufacturers of spark ignition marine gasoline engines (see October 4, 1996; 61 FR 52088). Neither peak exposure levels nor NIOSH nor OSHA standards are included as criteria for analyzing air quality related impacts except where short-term exposure is included in a NAAQS. The NPS agrees with the technical statement and summation that adverse health risk to the public would be unlikely from exposure.

As stated above, the methodology for assessing air quality impacts was based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

The ''Kado Study'' (Kado *et al.* 2000) presented the outboard engine air quality portion of a larger study described in *Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study* (CARB 2001). In the CARB report, results from both outboards and personal watercraft (two-stroke and four-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was two-stroke carbureted outboards and personal watercraft having the highest emissions, and four-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO_X emissions to air—two-stroke carbureted outboards and personal watercraft had the lowest NO_X emissions, while the four-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

Comments Regarding Soundscapes

25. One commenter stated that continued PWC use in the Gulf Islands National Seashore will not result in sound emissions that exceed the applicable Federal or State noise abatement standards, and technological innovations by the PWC companies will continue to result in substantial sound reductions.

NPS Response: The NPS concurs that on-going and future improvements in engine technology and design will likely further reduce the noise emitted from PWC. However, based on location and time, ambient noise levels at the national seashore can range from negligible to moderate, and improved technology resulting in a reduction of noise emitted from PWC would not significantly change impact thresholds.

26. One commenter cited noise testing conducted at Glen Canyon National Recreation Area (NRA) that indicated the maximum noise levels for PWC were actually lower than the maximum noise levels for other motorized vessels. In particular, the levels for PWC at 25 meters (82 feet) were approximately 68 to 76 A-weighted decibels, whereas the levels for other motorized vessels at 82 feet were approximately 64 to 86 A-weighted decibels.

NPS Response: The 2001 noise study at Glen Canyon National Recreation Area is discussed on pages 143 and 144 of the EA, and the correct numbers are cited. Specific noise studies were conducted in three areas of the park as part of this assessment. The noise of two or more PWC operating at the same time (when one unit produces 76 dB), and at a distance of 25 meters from the source, was shown to be 79 dB. Ambient sound levels at Gulf Islands National Seashore vary due to the wide range of land cover types and visitor and other activities within and near the national seashore. In addition to intensity, other aspects of PWC noise were assessed, including changes in pitch. In most locations, except in high use areas, natural sounds would prevail and motorized noise would be very infrequent or absent.

27. One commenter stated that the EA does not include any noise complaint data, and relies on anecdotal accounts. Gulf Islands is one of the most heavily used parks in the National Park System and the park's soundscapes are already impacted by a variety of ''human-caused sounds.'' The park experiences high ambient noise levels because of its proximity to a major airport, numerous military bases, and high-traffic commercial waterways. Furthermore, the 15dBA increase is meaningless because it lacks context. Any reference to decibel increases must indicate the distance from which the sound was measured and the method by which the measurement was taken.

NPS Response: The EA states that the level of sound impact associated with PWC use varies based on location, time of day, and season. The EA also states that sound impacts associated with PWC use would be most prevalent in quieter areas, such as coves, river corridors, and backwater areas. Sound impacts associated with PWC use in areas where ambient sound levels are high or where nearshore operation is restricted would be expected to be negligible, while the higher levels of impact (minor to moderate) would be expected to occur in areas where, or during times when, ambient noise levels are lower.

The reference to the 15dBA noise level increase associated with PWC leaving the water was taken from a study conducted by Komanoff and Shaw (2000) and is referenced in the EA.

The scope of the EA did not include the conduct of site-specific studies or sound testing studies for PWC use at the Gulf Islands National Seashore. Analysis of potential impacts of PWC use relating to sound was based on best available data, input from park staff, and the results of analysis using that data.

28. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals. PWC typically exhaust above the water or at the air/water transition area; therefore, most PWC sound is transmitted through the air and not the water.

NPS Response: Typically PWC exhaust below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have more than negligible adverse impacts on fish (page 111 of the EA), and the EA does not

state that PWC noise adversely affects underwater fauna.

29. One commenter suggested that PWC engine noise could adversely affect the experience of hikers and other recreational users along the Florida National Scenic Trail, which follows the Gulf of Mexico surf-line nearly the entire length of Gulf Islands National Seashore. Section 7c of the National Trails System Act states ''the use of motorized vehicles by the general public along any national scenic trail shall be prohibited.'' Allowing PWC use along the Gulf of Mexico surf line where the trail is located appears to violate the spirit of the National Trails System Act and the National Park Service's certification agreement with the Florida Trail Association and the USDA Forest Service.

NPS Response: Under this final rule, a flat wake zone will be established 300 yards from all park shorelines at the low-water mark, with more stringent restrictions at West Ship Island Pier and around designated wilderness boundaries. This restriction should be sufficient to minimize the disturbance to land-based recreational users from noise, including trail users.

Comments Regarding Shoreline/ Submerged Aquatic Vegetation

30. One commenter stated that natural forces, such as waves and wind, have a greater impact on vegetation than PWC use.

NPS Response: The EA was not conducted to determine if personal watercraft caused more environmental damage to park resources than other boats, other shoreline uses, or natural forces, but rather to determine if PWC use has an impact on the resources. Access of PWC into emergent marsh habitats, beaching PWC on vegetated shorelines for access, and nearshore operation of PWC has potential to result in damage to vegetation.

31. One commenter is concerned that if PWC were allowed unrestricted access, they could cause severe damage to seagrasses, which take years to recover.

NPS Response: The EA found that access of PWC into emergent marsh habitats, beaching of PWC on vegetated shorelines for access, and nearshore operation of PWC has potential to result in damage to vegetation. Specifically, under alternative A the EA found that reinstating PWC use within the national seashore would have adverse impacts to seagrass habitats in both the Florida and Mississippi districts that would be direct and indirect, minor to moderate, and short- and long-term, because shallow water habitats in the park are the preferred areas for PWC use, particularly in the Perdido Key and Mississippi Sound areas. However, alternative B found that PWC use would have impacts to seagrass habitats that are direct and indirect, minor, and short- and long-term. The flat wake zoning will restrict PWC impacts to about one-half of the potential seagrass habitat in the Florida District and one-quarter of the potential seagrass habitat in the Mississippi District. Therefore, alternative B, as implemented in this final rule, will have fewer adverse impacts to submerged aquatic vegetation than alternative A.

Comments Regarding Wildlife and Threatened and Endangered Species

32. The U.S. Fish and Wildlife Service (USFWS) concurs with the determination of ''not likely to adversely affect'' any of the threatened or endangered species found within the national seashore.

NPS Response: Comment noted.

33. The National Marine Fisheries Service (NMFS) stated that PWC can enter and maneuver in shallow water areas at high speeds that can result in erosion of shorelines supporting emergent marshes and a disturbance to benthic habitats including submerged aquatic vegetation (SAV) and shallow water zones utilized by a wide diversity of fish, invertebrates, and aquatic mammals. Essential Fish Habitat (EFH) for various species has been designated within the park.

NMFS further stated that in addition to being EFH for various species, the project area provides nursery, foraging, and refuge habitat for other commercially and recreationally important fish and shellfish. Although alternative B, if strictly enforced, would provide significant habitat protection, the NMFS is concerned about the need to protect SAV habitat from PWC outside of the flat wake zones as well. Adequately educating the public about these flat wake zones, marking them appropriately, enforcing the conditions/ restrictions, and monitoring the protective measure will be difficult and require an extensive effort by Gulf Islands National Seashore. Details addressing these issues should be included in the EA. Because no entry zones are easier to manage and enforce, this management tool should be given greater consideration, especially for areas of particular concern.

NPS Response: Gulf Islands National Seashore has created a subaquatic vegetation management plan, which outlines how the park proposes to manage PWC use with regard to the four components in the 1995 Florida Marine Research Institute seagrass scarring report. The four-point approach to management options includes education, channel marking, enforcement, and limited-monitoring zones, which will reduce impacts from PWC to EFH and associated species within the park.

The education component includes enhancing PWC user and boater education through interpretive talks, onsite bulletins, pamphlets, and brochures made available to PWC operators at marinas and boater registration locations, as well as to visitors who rent PWC. The park will also explore the feasibility of installing informational signs at marinas and boat launching sites to alert PWC operators to applicable flat wake zones. All media will clearly delineate and emphasize open and flat wake zones. Park staff will also attend boat shows within the greater Pensacola-Gulf Breeze, Florida, area to distribute boater education materials to interested PWC operators.

Gulf Islands National Seashore does not intend to install any new channel markers or aids to navigation within park waters. Park managers determined that channel markers would impose substantial visual intrusions to the view shed surrounding the islands and shorelines. It would also be cost prohibitive to acquire and maintain the number of signs necessary to delineate the 108 miles of coastal marine areas within the park. If monitoring results indicate a large increase in the number of scars occurring due to PWC use, the park will implement more restrictive closures through signage or other measures.

Park-commissioned law enforcement rangers will increase their water based patrols and vigilance in proximity to all flat wake zones. The rangers have full delegated authority to enforce all applicable laws within the jurisdictional boundaries of the park, including issuing verbal and written warnings and penalty citations at their discretion. NPS also has the wherewithal through the Park System Resource Protection Recovery Act to pursue legal recourse and secure damage recovery funds from violators who may cause significant resource injuries requiring restoration.

Regarding limited-monitoring zones, park resource managers will compare aerial photography taken before and after the implementation of special regulations permitting PWC use to quantify seagrass injuries and associated scarring. Biologists will also establish random underwater sample plots within all park seagrass beds in the PWC flat wake zones to determine if there is any increase in scarring attributed to PWC

use and to characterize observed injuries to seagrass beds. If resource managers observe a proportional increase to the amount of seagrass scarring after PWC is permitted, these areas will be identified for subsequent increased enforcement and/or closure. Surveys will also be conducted on an annual basis to determine the familiarity and understanding of PWC operators' knowledge of PWC restrictions.

34. One commenter stated that the analysis lacked site-specific data for impacts to wildlife, fish, and threatened and endangered species at Gulf Islands.

NPS Response: The scope of the EA did not include the conduct of site-specific studies regarding potential effects of PWC use on wildlife species at Gulf Islands National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data. A list of federal and state protected species is provided in Table 10 of the EA.

35. One commenter stated that PWC use and human activities associated with their use may not be any more disturbing to wildlife species than any other type of motorized or non-motorized watercraft. The commenter cites research by Dr. Rodgers, of the Florida Fish and Wildlife Conservation Commission, whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

NPS Response: We agree that some research indicates that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats; however, disturbance from both PWC and outboard motorboats does occur. Dr. Rodgers recommends that buffer zones be established for all watercraft, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. Several shoreline restrictions related to wildlife and wildlife habitat are included under the final rule as an added precaution. Impacts to wildlife and wildlife habitat under all the alternatives were judged to be negligible to moderate from all visitor activities.

In addition, the EA was not conducted to determine if personal watercraft caused more environmental damage to park resources than other boats, but rather to determine if personal watercraft use was consistent with the national seashore's enabling legislation and management goals and objectives. The alternatives identified and the determination of their consequences were based upon the best information available.

36. One commenter pointed out discrepancies for wildlife impacts between the EA and the 2001 Determination. Specifically, the EA states that nearshore flat wake zones will minimize wildlife impacts, even though no new surveys have been conducted to support this conclusion.

NPS Response: The EA does not imply that all potential impacts associated with nearshore use of PWC would be minimized as a result of implementing a flat wake zone. Implementation of a flat wake zone would reduce potential impacts associated with high speed use in nearshore areas as compared to use without the speed restriction. The scope of the EA did not include the conduct of surveys to determine potential effects of the current PWC ban on wildlife use or the effects of PWC use on visitor experience at Gulf Islands National Seashore. Analysis of potential impacts of PWC use or the ban of their use at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

37. One commenter stated that the EA did not adequately investigate the impact of PWC use on marine mammals or the impact of the PWC ban on biological migration patterns.

NPS Response: The scope of the EA did not include the conduct of surveys to determine potential effects of the current PWC ban on biological use patterns or marine mammals in Gulf Islands National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

38. One commenter reminded NPS that consultation with the USFWS and National Marine Fisheries Service (NMFS) must be completed before any regulations are finalized. Consultation with the NMFS is required under section 305 of the Magnuson-Stevens Act. In addition, either ''small take permits'' or a waiver is required under the Marine Mammal Protection Act.

NPS Response: NPS consulted with the Fish and Wildlife Service and the National Marine Fisheries Service as required under section 7 of the Endangered Species Act. Concurrence with the EA's determinations was received from the Fish and Wildlife Service on May 10, 2005, and from the National Marine Fisheries Service on November 4, 2005. NPS consulted with the National Marine Fisheries Service Habitat Conservation Division as required under section 305 of the Magnuson-Stevens Act. Gulf Islands National Seashore developed a subaquatic vegetation management plan, which outlines how the park proposes to manage PWC use with regard to the four components in the 1995 Florida Marine Research Institute seagrass scarring report. This plan is described further above. NPS also consulted with the National Marine Fisheries Service Office of Protected Resources regarding the Marine Mammal Protect Act. In a letter dated November 15, 2005, NMFS stated that an authorization for incidental taking under section 101(a)(5) of the Marine Mammal Protect Act is not necessary.

Comments Related to Visitor Experience and Satisfaction

39. One commenter stated that demographic and usage information demonstrates that today's PWC owner typically uses PWC for family-oriented outings, and that they are not reckless ''stunt'' operators.

NPS Response: NPS agrees that some PWC operators are more mature and are not reckless with their machines, and that many trips are family-oriented. However, PWC use does vary, and some operators still use the machines for ''thrill,'' including stunts, wake jumping, and other more risky exercises. Some users can still create disturbances or safety concerns, especially if children are operating the vessel. Under alternative B, as implemented by this final rule, NPS will provide additional enforcement and education to minimize the possibility of any serious injuries.

Comments Associated With Safety

40. One commenter stated that the accident data used in the analysis was outdated and incorrect because PWC accidents are reported more often than other boating accidents.

NPS Response: The mediating factors described in the comment are recognized. However, these factors are unlikely to fully explain the large difference in percentages (personal watercraft are only 7.5% of registered vessels, yet they are involved in 36% of reported accidents). In other words, personal watercraft are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor relative to other motorboats at the national seashore.

Incidents involving watercraft of all types, including personal watercraft, are reported to and logged by National Park Service staff. A very small proportion of incidents in the national seashore are estimated to go unreported.

41. The U.S. Coast Guard requested that NPS work cooperatively with the Coast Guard, the State of Florida, and other agencies in the development of any changes to current regulations concerning boating in Gulf Islands National Seashore. The Coast Guard strives to ensure uniformity and effectiveness of recreational boating laws. Uniform regulations make it both easier for compliance and enforcement.

NPS Response: The park has solicited input from other government agencies throughout the process and wants to work cooperatively with them.

42. One commenter stated that the EA does not cite any park-specific accident data, and instead relies on Florida State and county data. No Mississippi accident data is included. There is substantial empirical support for concluding that PWC use does not create disproportionate safety concerns. An analysis of accident data at Fire Island National Seashore suggests that the percentage of boating accidents in the park involving PWC is actually less than might be expected based on the level of usage.

NPS Response: Although no boating accident data is available for the park, page 97 of the EA discusses boating violation citations in both districts of the park. From 1997 to 2002, PWC-related violation citations accounted for 36 percent to 68 percent of all boating violation citations within the park. Although the number of citations has generally decreased since 1997, park staff still observed PWC being operated carelessly and recklessly in congested boating and swimming areas and among anchored boats, as stated on page 97 of the EA. Many of these violations went unreported since they were observed from the beach and enforcement was not possible. The accident data analysis conducted at Fire Island National Seashore is not necessarily applicable to Gulf Islands National Seashore.

Furthermore, as noted on page 200 of the EA, the National Transportation Safety Board reported in 1996 that personal watercraft represented 7.5 percent of State-registered recreational boats but accounted for 36 percent of recreational boating accidents. In the same year, PWC operators accounted for more than 41 percent of people injured in boating accidents. PWC operators accounted for approximately 85 percent of the persons injured in accidents studied in 1997.

43. One commenter stated that the NPS supports the preferred alternative by assuming that PWC operation will not adversely impact public safety and that a majority of PWC users operate their craft in ''a lawful manner.'' However, in 2001 the NPS reported that PWC use threatened the safety of visitors and that PWC are often operated in a ''reckless'' manner.

NPS Response: NPS' analysis recognizes that there is some potential danger in PWC operation. However, not all PWC operation is conducted in a reckless manner, and NPS cannot regulate activities based on the type of injuries likely to be sustained if the public wishes to participate in an activity that is supported by the park's enabling legislation. However, NPS is providing safe operating instructions, use restrictions, and enforcement to minimize the possibility of any serious injuries. Alternative B, as implemented in this final rule, will provide more enforcement of PWC restrictions and education for PWC users.

Comments Regarding Cultural Resources

44. One commenter stated that the analysis refers to a potential concern that the ability of PWC operators to access remote areas of the park unit might make certain cultural, archeological and ethnographic sites vulnerable to looting or vandalism. However, there is no indication of any instances where these problems have occurred. Nor is there any reason to believe that PWC users are any more likely to pose these concerns than canoeists, kayakers, hikers, or others who might access these same areas.

NPS Response: The EA was focused on the analysis of impacts from PWC use. PWC can make it easier to reach some remote upstream areas, compared to hiking to these areas, but the NPS agrees that the type of impacts to cultural resources from any users of remote areas of the park would be similar if visitors can reach these areas.

45. The Mississippi State Historic Preservation Office stated that is has no issues of concern or reservations with the PWC EA. The Florida State Historic Preservation Office stated that alternative B is the preferred alternative, if the no action alternative cannot be chosen.

NPS Response: Comments noted.

Comments Regarding Socioeconomics

46. One commenter stated that the EA ignores the positive socioeconomic effects of banning PWCs, and that a recent study found that non-PWC users preferentially seek out areas without PWCs and thus banning PWCs would likely be beneficial to the local economy.

NPS Response: The number of recreational visits at Gulf Islands National Seashore in calendar year 2001 was 389,499, a 0.8 percent reduction from 2000. No data were available for more recent years, including those since the park was closed to PWC use, at the time the EA was written. A variety of factors influence visitor use numbers at national parks.

47. Several commenters, including two U.S. Congressmen, stated that access by PWC to national parks is vital to local economies, and PWC enthusiasts support small businesses providing services to these riders. These businesses will be adversely affected if PWC operators who travel to the park cannot recreate on their PWC. Banning PWC will have a negative economic impact on the State of Mississippi. Tourism will probably suffer if visitors cannot ride their PWC freely within the park.

NPS Response: The EA analysis evaluated the socioeconomic impact of each alternative. NPS chose alternative B, Reinstate PWC Use Under a Special NPS Regulation with Additional Management Prescriptions, as the preferred alternative. NPS anticipates that under alternative B, as implemented by this final rule, consumer and producer surplus (i.e., benefits) for PWC-related goods and services is expected to increase as a result of lifting the ban on PWC use at Gulf Islands National Seashore. Overall, alternative B is considered to provide the greatest level of net benefits.

48. One commenter stated that the EA does not investigate the economic impact that lifting the PWC ban would have upon businesses that are dependent upon the conservation of wildlife and their habitat.

NPS Response: Page 214 of the EA states that consumer surplus is expected to decrease slightly for visitors other than PWC users as a result of decreased solitude, decreased water quality, and an increase in the risk of accidents involving PWC. However, the flat wake zone requirement 300 yards from all shorelines will reduce these impacts.

49. Several commenters stated that the EA fails to provide a true accounting of the costs and benefits of the alternatives, and that the socioeconomic analysis is skewed to support a decision to authorize continued PWC operation. The EA does not include a detailed description of the costs of continued PWC operation upon other resources, such as other visitors' experiences, wildlife, and seagrass beds. The NPS

admits these ''costs could not be quantified.'' This calls into question the accuracy and fairness of the economic analysis.

NPS Response: When conducting the socioeconomic analysis, six major affected groups were identified. Two of these groups were ''other visitors or potential visitors who may have a different experience at the national seashore if personal watercraft continue to be banned or restricted (canoeists, anglers, swimmers, hikers, boaters, and other visitors),'' and ''producers of services to other types of summer visitors (e.g., canoe rentals or powerboat rentals) who may experience a change in their welfare.''

NPS agrees that the costs of continued PWC operation upon other resources, such as other visitors' experiences, wildlife, and seagrass beds, could not be quantified because of a lack of available data. The scope of the EA did not include gathering these types of data. The EA states that if all costs could be incorporated, the indicated net benefits for each alternative would be lower. Those costs would likely be greater for alternative A than for alternative B, and alternative B would likely have the greatest level of net benefits. It is unlikely that these conclusions would change even if better data were available.

Comments Related to Enforcement

50. Several commenters stated that restricting PWC to flat wake zones would only work with increased education and law enforcement. Without an overall budget increase, any increased law enforcement and education would take resources away from other operations, such as resource management.

NPS Response: Gulf Island National Seashore is fully aware that current enforcement activities would not be successful under the preferred alternative and that this new regulation will require changes and reallocations of assets and resources, with increased education and enforcement.

Additional boats and mooring facilities have recently been acquired, increased training of marine enforcement staff has occurred, and initial efforts at educating the boating public have occurred. The majority of seashore users are law-abiding and sensitive to the special values of seashore waters and lands. An active education program backed by a reasonable enforcement effort should, within a few seasons, educate PWC users to the requirements of the new regulation. After an initial period of adjustment to the new regulations, the small number of PWC users who encounter seashore waters should be knowledgeable enough to conduct themselves within the law, and the initial need for focused attention on PWC operators will diminish. Additional water presence and education are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

51. The Florida Fish and Wildlife Conservation Commission stated that it does not support the flat wake zone for PWC for several reasons. Expectation for enforcement will be unrealistic without marking of the areas with buoys. The application of flat wake restrictions for PWC only would create unnecessary boating safety and navigational hazards for boaters, and will be worse in narrow areas along the Intracoastal Waterway. The flat wake zone would result in a significant reduction in the amount of riding area for PWC operators, potentially resulting in an increased likelihood of vessel collisions.

NPS Response: The national seashore has over 100 miles of shoreline. Placement of buoys throughout the entire park is not feasible due to cost and maintenance, and would be confusing to most operators. The park believes that through education and enforcement, such delineation will not be necessary. Where it is shown that education or enforcement do not result in compliance, buoys could be placed as a temporary measure. The limits of the flat wake zones will offer an envelope large enough to allow the prudent operator and enforcement officer to recognize when gross violation may be occurring.

The Intracoastal Waterway is outside of the park boundary, so none of the flat wake zones apply to this area. None of the flat wake zones are so narrow that PWC will be forced into the Intracoastal Waterway, or forced outside of park boundaries.

The final rule will provide access to all areas of the park that are open to other watercraft, so no riders will be forced to operate outside park boundaries in unprotected waters. In addition, PWC use will not be eliminated; the final rule simply requires that PWC operate in designated areas at a flat wake speed.

Though these rules were developed to specifically regulate PWC use, the park realizes and appreciates that an appearance of discrimination exists between PWC and other vessels and that there is a need for rulemaking to regulate vessels other than PWC in similar ways we are managing PWC. The park is committed to working toward rulemaking that will correct the differences.

Comments Regarding Other NEPA Issues

52. Several commenters, including two U.S. Congressmen, stated that the public has not had sufficient opportunity to be involved in the rulemaking process, and that additional public scoping meetings, hearings, and other opportunities to comment are necessary.

NPS Response: During the development of the *PWC Determination,* which was published in 2002, the park received over 1,000 written individual comments. Comments indicated that approximately one-third of the commenters were in favor of the PWC prohibition, and two-thirds were opposed on the basis of discrimination against personal watercraft.

The EA was written to evaluate a range of alternatives and strategies for managing PWC use at Gulf Islands National Seashore to ensure the protection of park resources and values while offering recreational opportunities as provided for in the national seashore's enabling legislation, purpose, mission, and goals. As part of the EA process, two public scoping open house meetings were held (on January 28, 2003, in Gulf Breeze, Florida, and January 30, 2003, in Ocean Springs, Mississippi). Public comments were collected for 30 days after the meetings, from January 28 to February 28, 2003, and were based on preliminary alternatives that were presented at the open house meetings. The preliminary alternatives were revised to reflect public concerns and comments. Alternative B, Reinstate PWC Use with Additional Management Prescriptions, was chosen as the preferred alternative as a result of the EA analysis.

53. One commenter stated that the proposed rule makes no mention of Hurricane Ivan, which struck the area in the fall of 2004, and the environmental implications of this event on national seashore resources and values. The cumulative impact must be taken into account in evaluating the environmental impact of permitting PWC use in these areas.

NPS Response: No mention was made of Hurricane Ivan because it had not occurred when the EA was prepared. All storms have the potential to impact park resources and cannot be predicted.

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made no

changes to the proposed rule language with regard to PWC operations.

Summary of Economic Impacts

Personal Watercraft Regulations in Gulf Islands National Seashore

Alternative C, the no-action alternative, represents the baseline of this analysis. Under that alternative, all PWC use would remain prohibited in the park. Alternative A would permit PWC use as managed in the park prior to the ban and Alternative B would permit PWC use, but with additional restrictions compared with pre-ban management. All benefits and costs associated with these regulatory alternatives are measured relative to the baseline established by Alternative C. Therefore, there are no incremental benefits or costs associated with Alternative C.

The primary beneficiaries of Alternatives A and B would be the park visitors who use PWCs and the businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. The present value of benefits to PWC users are estimated to range between $670,100 and $881,500 for these alternatives. The present value of benefits to businesses that provide services to PWC users for Alternatives A and B are estimated to range between $479,900 and $4,130,400. Additional beneficiaries include the individuals who use PWCs outside the park where PWC users that are displaced from the park may decide to ride if PWC use within the park were prohibited. These benefit estimates are presented in Table 1. The amortized values per year of these benefits over the ten-year timeframe are presented in Table 2.

TABLE 1.—PRESENT VALUE OF BENEFITS FOR PWC USE IN GULF ISLANDS NATIONAL SEASHORE, 2003–2012

[Thousands] [a]

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3% [b]	$881.5	$664.6 to $4,130.4	$1,546.1 to $5,011.9.
Discounted at 7% [b]	705.3	$511.9 to $3,181.2	$1,217.2 to $3,886.5.
Alternative B:			
Discounted at 3% [b]	837.5	$623.1 to $3,859.6	$1,460.5 to $4,697.0.
Discounted at 7% [b]	670.1	$479.9 to $2,972.6	$1,149.9 to $3,642.7.

[a] Benefits may not sum to the indicated totals due to independent rounding.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—AMORTIZED TOTAL BENEFITS PER YEAR FOR PWC USE IN GULF ISLANDS NATIONAL SEASHORE, 2003–2012

[Thousands]

	Amortized total benefits per year [a]
Alternative A:	
Discounted at 3% [b]	$181.3 to $587.5.
Discounted at 7% [b]	$173.3 to $553.4.
Alternative B:	
Discounted at 3% [b]	$171.2 to $550.6.
Discounted at 7% [b]	$163.7 to $518.6.

[a] This is the present value of total benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

The primary group that would incur costs under Alternatives A and B would be the park visitors who do not use PWCs and whose park experiences would be negatively affected by PWC use within the park. At Gulf Islands National Seashore, non-PWC uses include boating, canoeing, fishing, and hiking. Additionally, the public could incur costs associated with impacts to aesthetics, ecosystem protection, human health and safety, congestion, nonuse values, and enforcement. However, these costs could not be quantified because of a lack of available data. Nevertheless, the magnitude of costs associated with PWC use would likely be greatest under Alternative A, and lower for Alternative B due to increasingly stringent restrictions on PWC use.

Because the costs of Alternatives A and B could not be quantified, the net benefits associated with those alternatives (benefits minus costs) also could not be quantified. However, from an economic perspective, the selection of Alternative B as the preferred alternative was considered reasonable even though the quantified benefits are somewhat smaller than under Alternative A. That is because the costs associated with non-PWC use, aesthetics, ecosystem protection, human health and safety, congestion, and nonuse values would likely be greater under Alternative A than under Alternative B. Quantification of those costs could reasonably result in Alternative B having the greatest level of net benefits.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It 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. The National Park Service has completed the report ''Economic Analysis of Personal Watercraft Regulations in Gulf Islands National Seashore'' (MACTEC Engineering, January 2004).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled ''Economic Analysis of Personal Watercraft Regulations in Gulf Islands National Seashore'' (MACTEC Engineering, January 2004). Copies of this report are available at: *http://www.nps.gov/guis/pphtml/documents.html.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect will be positive for businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. The present value of benefits to businesses that provide services to PWC users are estimated at $4,130,400.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule only affects use of NPS-administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park. See also number 5 in the responses to comments section of this preamble.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Department has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). The EA was available for public review and comment from April 19, 2004 to May 18, 2004. A Finding of No Significant Impact (FONSI) was signed on January 25, 2006. Copies of the EA and FONSI may be downloaded at *http://www.nps.gov/guis/pphtml/documents.html* or obtained at park headquarters Monday through Friday, 8 a.m. to 4:30 p.m. Mail inquiries should be directed to park headquarters: Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedure Act

This rule allows use of PWC in Gulf Islands National Seashore under specified conditions. Because current regulations do not allow use of PWC at all, this rule relieves a restriction on the public. For this reason, and because NPS wishes to allow the public to take advantage of the new rules as soon as possible, this final rule is effective upon publication in the **Federal Register**, as allowed by the Administrative Procedure Act at 5 U.S.C. 553(d)(1).

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Add new paragraph (c) to § 7.12 to read as follows:

§ 7.12 Gulf Islands National Seashore.

* * * * *

(c) *Personal Watercraft (PWC).* (1) PWCs may operate within Gulf Islands National Seashore except in the following closed areas:

(i) The lakes, ponds, lagoons and inlets of Cat Island, East Ship Island, West Ship Island, Horn Island, and Petit Bois Island;

(ii) The lagoons of Perdido Key within Big Lagoon;

(iii) The areas within 200 feet from the remnants of the old fishing pier and within 200 feet from the new fishing pier at Fort Pickens; and

(iv) Within 200 feet of non-motorized vessels and people in the water, except individuals associated with the use of the PWC.

(2) PWC may not be operated at greater than flat wake speed in the following locations:

(i) Within 0.5 mile from the shoreline or within 0.5 mile from either side of the pier at West Ship Island;

(ii) Within 0.5 mile from the shoreline on the designated wilderness islands of Horn and Petit Bois; and

(iii) Within 300 yards from all other park shorelines.

(3) PWC are allowed to beach at any point along the shore except as follows:

(i) PWC may not beach in any restricted area listed in paragraph (c)(1) of this section; and

(ii) PWC may not beach above the mean high tide line on the designated wilderness islands of Horn and Petit Bois.

(4) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: April 17, 2006.

Matthew Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–4180 Filed 5–3–06; 8:45 am]

BILLING CODE 4310–X8–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 05–211; FCC 06–52]

Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts a number of modifications to the Commission's competitive bidding rules and procedures. The Commission believes the rule modifications it adopts will allow it to achieve its statutory mandates to ensure that designated entities are given the opportunity to participate in spectrum-based services and that in providing such opportunity it prevents the unjust enrichment of ineligible entities.

DATES: Effective June 5, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Carter at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Report and Order* released on April 25, 2006. The complete text of the *Second Report and Order* including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Second Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 06–52. The *Second Report and Order* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions*.

Synopsis of the Second Report and Order

1. In the *Second Report and Order* (*Second R&O*), the Commission addresses its rules concerning the eligibility of applicants and licensees for designated entity benefits. In the *Second R&O*, the Commission modifies its rules in order to increase its ability to ensure that the recipients of designated entity benefits are limited to those entities and for those purposes Congress intended.

2. The Commission revises its general competitive bidding rules (Part 1 rules) governing benefits reserved for designated entities to include certain material relationships as factors in determining designated entity eligibility. Specifically, the Commission adopts rules to limit the award of designated entity benefits to any applicant or licensee that has impermissible material relationships or an attributable material relationship created by certain agreements with one or more other entities for the lease or resale of its spectrum capacity. These definitions of material relationships are necessary to strengthen the Commission's implementation of Congress's directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of the Commission's designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

3. The Commission also adopts rule modifications to strengthen its unjust enrichment rules so as to better deter entities from attempting to circumvent the Commission's designated entity eligibility requirements and to recapture designated entity benefits when ineligible entities control designated entity licenses or exert impermissible influence over a designated entity. To ensure the Commission's continued ability to safeguard the award of designated entity benefits, the Commission provides clarification regarding how it will implement its rules concerning audits and refines its rules with respect to the reporting obligations of designated entities.

4. The rules the Commission adopts will apply to all determinations of eligibility for all designated entity benefits, including bidding credits and, as applicable, set-asides, and installment payments, unless excepted by the grandfathering provisions. These rules will be applied to any application filed to participate in auctions and to all long-form applications filed by winning bidders, as well as to all applications for an authorization, an assignment or transfer of control, a lease, or reports of events affecting a designated entity's ongoing eligibility, including impermissible material relationships or attributable material relationships, filed on or after release of the *Second R&O*. However, the rules will not apply to the upcoming auction of 800 MHz Air-Ground Radiotelephone Service licenses, scheduled to begin on May 10, 2006, nor to the Form 601 applications to be filed subsequent to the close of that auction by the winning bidders.

I. Background

5. Throughout the history of the auctions program, the Commission has endeavored to carry out its Congressional directive to promote the involvement of designated entities in the provision of spectrum-based services. The challenge for the Commission in carrying out Congress's plan has always been to find a reasonable balance between the competing goals of, first, providing designated entities with reasonable flexibility in being able to obtain needed financing from investors and, second, ensuring that the rules effectively prevent entities ineligible for designated entity benefits from circumventing the intent of the rules by obtaining those benefits indirectly, through their investments in qualified businesses.

6. The Commission's primary method of promoting the participation of designated entities in competitive bidding has been to award bidding credits—percentage discounts on winning bid amounts—to small business applicants. The Commission also has utilized other incentives, such as installment payments and, in broadband Personal Communications Services, a license set-aside to encourage designated entities to participate in spectrum auctions and in the provision of service.

7. In the *FNPRM*, 71 FR 6992 (February 10, 2006), the Commission tentatively concluded that it should restrict the award of designated entity benefits to an otherwise qualified applicant where it has a material relationship with a large in-region incumbent wireless service provider. The Commission sought comment on how to define the specific elements of such restriction. Further, the Commission sought comment on whether such a restriction on the award of designated entity benefits should apply where a designated entity applicant has a material relationship with a large entity that has a significant interest in communication services, and whether the Commission should include in such a definition a broad category of communications-related businesses or instead exclude or include certain types of entities. In addition, the Commission sought comment on whether it should adopt unjust enrichment provisions that would require reimbursement of designated entity benefits in the event that a designated entity makes a change in its material relationships or makes any other changes that would result in the loss of or change in its eligibility subsequent to acquiring a license with a designated entity benefit. Finally, in the *FNPRM*, the Commission sought comment on changes to its auction application rules to facilitate the application of any rule modifications to upcoming auctions.

A. Material Relationship

8. In order to define material relationship the *FNPRM* sought comment on the specific nature of the types of additional relationships that should trigger a restriction on the availability of designated entity benefits. The *FNPRM* also sought comment on whether restricting certain agreements as a material relationship would be too harsh or unnecessarily limit a designated entity applicant's ability to gain access to capital or industry expertise. Additionally, the *FNPRM* sought comment on whether there might be instances where the existence of either a material financial agreement or a material operational agreement might be appropriate and might not raise issues of undue influence. In this regard, the *FNPRM* asked whether the Commission should allow designated entity applicants to obtain a bidding credit or other benefits if they had only a material financial agreement or only a material operational agreement but not both, and what factors should the Commission consider in determining the types of relationships that might not adversely affect an applicant's designated entity eligibility. Finally, the Commission sought comment on whether a spectrum leasing arrangement should be defined as a material relationship, and whether it should consider any other arrangements for the purposes of such a definition.

9. In considering how to define material relationships the Commission seeks to balance the designated entity applicant's needs for flexibility to structure its business relationships against its statutory obligation to award these small business benefits only to entities intended by statute to be eligible. In the Commission's experience in administering the designated entity program over the last several years, it has witnessed a growing number of complex agreements between designated entities and those with whom they choose to enter into financial and operational relationships. Although some of these agreements may have contributed to the wireless industry becoming a thriving sector of the nation's economy, the relationships underpinning such contracts underscore the need for stricter regulatory parameters to ensure, as Congress intended, that: (1) Benefits are awarded to provide opportunities for designated entities to become robust independent facilities-based service providers with the ability to provide new and innovative services to the public; and (2) the Commission employs methods to prevent unjust enrichment.

10. In considering how to evaluate which specific relationships should trigger additional eligibility restrictions, the Commission concludes that certain agreements, by their very nature, are generally inconsistent with an applicant's or licensee's ability to achieve or maintain designated entity eligibility because they are inconsistent with Congress's legislative intent. In this regard, where an agreement concerns the actual use of the designated entity's spectrum capacity, it is the agreement, as opposed to the party with whom it is entered into, that causes the relationship to be ripe for abuse and creates the potential for the relationship to impede a designated entity's ability to become a facilities-based provider, as intended by Congress.

11. As the Commission indicated in the *Secondary Markets Second Report and Order*, 69 FR 77522 (December 27, 2004), Congress specifically intended that, in order to prevent unjust enrichment, the licensee receiving designated entity benefits must actually provide facilities-based services as authorized by its license. In that proceeding, the Commission stated that leasing by a designated entity licensee of substantially all of the spectrum capacity of the licensee would cause attribution that would likely lead to a loss of eligibility, and that the leasing of a small portion of such capacity where there was no other relationship between the parties likely would not result in a finding of attribution.

12. The Commission modifies its rules regarding eligibility for designated entity benefits for applicants or licensees that have agreements that create material relationships. Specifically, except as grandfathered, the Commission concludes that an applicant or licensee has impermissible material relationships when it has agreements with one or more other entities for the lease or resale of, on a cumulative basis, more than 50 percent of its spectrum capacity of any individual license. Such impermissible material relationships render the applicant or licensee (i) ineligible for the award of designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis. Except as grandfathered, the Commission finds that an applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity, including entities and individuals attributable to that entity, for the lease or resale of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license that is held by the applicant or licensee. The attributable material relationship with that entity will be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits, and (ii) liability for unjust enrichment on a license-by-license basis.

13. The Commission concludes that these definitions of material relationship are necessary to ensure that the recipient of the Commission's designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public; that the Commission employs methods to prevent unjust enrichment; and that its statutory-based benefits are awarded only to those that Congress intended to receive them.

14. Spectrum manager and *de facto* transfer leasing agreements and resale agreements with a single entity for 25 percent and less of the designated entity licensee's total spectrum capacity on a license-by-license basis, or cumulative agreements with multiple entities for 50 percent or less of a designated entity licensee's total spectrum capacity on a license-by-license basis will continue to

be reviewed under the Commission's existing designated entity eligibility rules, and pursuant to existing rules and policies may result in unjust enrichment obligations.

15. Recognizing that there are numerous agreements in existence that might fall within the Commission's newly defined impermissible material relationships and attributable material relationship, the Commission will apply these eligibility restrictions on a prospective basis. The Commission will grandfather the existence of impermissible and attributable material relationships that were in existence before the release date of the *Second R&O* for the purposes of assessing unjust enrichment payments on benefits previously awarded or pending award. In assessing the imposition of unjust enrichment for future events, if any, the Commission will consider unjust enrichment implications on a license-by-license basis.

16. Except as limited by the Commission's grandfathering provisions, the rules that the Commission adopts will apply to all determinations of eligibility for all designated entity benefits with regard to any application filed to participate in auctions in which bidding begins after the effective date of the rules, as well as to all applications for an authorization, an assignment or transfer of control, a spectrum lease, or reports of events affecting a designated entity's ongoing eligibility. Grandfathering the eligibility of all prior designated entity structures that involve impermissible and/or attributable material relationships would allow these designated entities to continue to acquire additional licenses and designated entity benefits using a structure that the Commission has determined would permit a third party to leverage improper influence over a designated entity in a manner that is inconsistent with the Congressional purposes for the designated entity program. Applying the Commission's rules in this manner is consistent with how the Commission currently determines an applicant's eligibility for designated entity benefits and how it applies its unjust enrichment obligations.

17. To address concerns of several commenters, the Commission will, however, grandfather certain relationships that were in existence before the release date of the *Second R&O* in the context of eligibility for future benefits. Specifically, an applicant will not be considered to be ineligible for benefits based solely on an attributable material relationship or impermissible material relationships of certain of its affiliates provided that the agreement that forms the basis of the affiliate's attributable material relationship or impermissible material relationship is otherwise in compliance with the Commission's designated entity eligibility rules, was entered into prior to the release date of the *Second R&O* and is subject to a contractual prohibition that prevents the affiliate from contributing to the designated entity's total financing. In taking this action, the Commission seeks to ensure that the additional eligibility requirements it adopted does not unnecessarily restrict applicants seeking designated entity benefits for relationships that were previously permissible under the Commission's rules.

B. Unjust Enrichment

18. The Commission also made changes to its unjust enrichment rules to provide additional safeguards designed to better ensure that designated entity benefits go to their intended beneficiaries. One of the Commission's primary objectives in administering its designated entity program is to prevent unjust enrichment. Accordingly, in conjunction with the eligibility restrictions the Commission adopted, the Commission also modifies its rules and strengthens its unjust enrichment schedule for licenses acquired with bidding credits.

19. In the *FNPRM*, the Commission sought comment on whether it should adopt revisions to its unjust enrichment rules, or whether the Commission should adopt other revisions to its unjust enrichment rules. Additionally, the Commission sought comment on whether an unjust enrichment payment should not be required in the case of natural growth of the revenues attributed to an incumbent carrier above the established benchmark.

20. Commenters discussing proposed changes to the unjust enrichment policies, contend that the Commission should continue to apply the current unjust enrichment standard. These entities argue that the current unjust enrichment rules are sufficient and provide adequate protection. Thus, they conclude that no increased regulation is needed or appropriate. Other commenters argue for the implementation of stricter unjust enrichment rules.

21. The Commission agrees with commenters that adoption of stricter unjust enrichment rules, applicable to all designated entities, will promote the objectives of the designated entity program. The designated entity and unjust enrichment rules were adopted to ensure the creation of new telecommunications businesses owned by small businesses that will continue to provide spectrum-based services. In addition, the unjust enrichment rules provide a deterrent to speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit. By extending the unjust enrichment period to ten years, the Commission increased the probability that the designated entity will develop to be a competitive facilities-based service provider.

22. In addition to revising the unjust enrichment payment schedule, the Commission will impose a requirement that the Commission must be reimbursed for the entire bidding credit amount owed, plus interest, if a designated entity loses its eligibility for a bidding credit for any reason, including but not limited to, entering into an impermissible material relationship or an attributable material relationship, seeking to assign or transfer control of a license, or entering into a *de facto* transfer lease with an entity that is not eligible for bidding credits prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the license term have been met.

23. The Commission imposes the above-mentioned reimbursement obligations on any licensee that acquires licenses with bidding credits and subsequently loses its eligibility for a bidding credit for any reason because the implementation of such a policy is consistent with the policies underlying the Commission's designated entity and unjust enrichment requirements. By expanding the unjust enrichment period and requiring full payment of the bidding credit until a license has been constructed, the Commission is fulfilling Congress's mandate that designated entities are given the opportunity to participate in the provision of spectrum-based services, while ensuring that entities that are not eligible for designated entity benefits cannot benefit from the designated entity program by acquiring the licenses or entering into impermissible or attributable material relationships with a designated entity after it acquires a license at auction or in the secondary market.

24. The Commission agrees with a commenter's proposal that unjust enrichment payments should not be required for licenses held by the designated entity in the case of natural

or permissible growth of the gross revenues of either a designated entity or an investor in a designated entity. Currently, there are no permissible growth provisions associated with bidding credits. However, Commission practice has been that a designated entity will not owe unjust enrichment for its licenses if the designated entity's increased gross revenues, or the increased gross revenues of any controlling interest or affiliate, are due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service. Under the policies adopted in the *Second Report and Order,* the Commission similarly would evaluate an applicant's or licensee's eligibility for designated entity benefit at the time it files an application regarding a reportable eligibility event, as required in the new § 1.2114 that the Commission adopted. Thus, if the designated entity seeks to acquire licenses on the secondary market or in future auctions, all of the designated entity's gross revenues, along with the gross revenues of its controlling interests and affiliates, will be attributed to the designated entity.

C. Implementation

25. To prevent abuse of the designed entity program, the Commission will use the following combination of existing and new measures to ensure that designated entity incentives benefit solely those parties intended to receive them under both its rules and section 309(j) of the Communications Act of 1934. First, the Commission will review the agreements to which designated entity applicants and licensees are parties. Second, the Commission will require that applicants and licensees seek advance Commission approval for all events that might affect their ongoing eligibility for designated entity benefits. Third, the Commission will impose periodic reporting requirements on designated entities. Fourth, the Commission will conduct audits, including random audits, of those claiming designated entity benefits.

26. In light of the steps the Commission is taking in the *Second R&O* to aid its ability to ensure that only eligible entities obtain designated entity benefits, the Commission will undertake a thorough review of the long-form application (FCC Form 601) filed by every winning bidder claiming designated entity benefits and will carefully review all relevant contracts, agreements, letters of intent, and other such documents affecting that applicant. This review remains essential to the Commission's assessment of designated entity eligibility under the controlling interest standard and will be even more critical in ensuring that the rules and policies adopted in the *Second R&O* are fully effectuated. In order to implement this rule, the Commission delegated to the Bureau the authority to determine the method for designated entities to submit the appropriate and relevant documents.

27. Further, the Commission will also thoroughly review all relevant contracts, agreements, letters of intent, and other such documents affecting an applicant, which claims designated entity eligibility, seeking to acquire licenses with designated entity benefits in the secondary market.

28. In light of the changes that the Commission is making to the designated entity rules, the Commission will require additional information from applicants and licensees in order to ensure compliance with the policies and adopted rules. The Commission also adopted rules authorizing modifications to be made, as necessary, to and the creation, if necessary, of FCC forms to implement the rule changes.

29. The Commission will revise § 1.2110 of its rule to require designated entity licensees to file an annual report with the Commission, which will, at a minimum, include a list and summaries of all agreements and arrangements that relate to eligibility for designated entity benefits.

30. The Commission considers adoption of these reporting requirements to be a foreseeable component of the designated entity eligibility rules the Commission adopted, and the Commission believes them to be necessary to the successful implementation of these rules. The Commission delegates to the Bureau the authority to implement the necessary modifications to FCC forms and the Universal Licensing System to implement these rule changes and to determine the content of, and filing procedures for, the new annual filing requirement.

31. Pursuant to the Commission's existing rules, the Commission has broad power to conduct audits at any time and for any reason, including at random, of applicants and licensees claiming designated entity benefits. A commenter urges the Commission to employ its existing audit power and regularly conduct random audits to uncover manipulation of the program. The commenter recommends that these audits incorporate site visits to offices and physical plants, interviews with staff and meaningful inquiries into the management of the licenses. Another commenter suggested the imposition of periodic reporting requirements might dissuade some abuse of the Commission's rules.

32. The Commission agrees that its audit authority is an effective method by which to ascertain the initial and ongoing eligibility of the claimants of designated entity benefits. Applicants and licensees should therefore understand that the Commission can and will audit their continued designated entity eligibility as circumstances may necessitate or at will. Moreover, based on the significance of the upcoming AWS auction, the Commission commits to audit the eligibility of every designated entity that wins a license in that auction at least once during the initial license term. In order to effectively conduct these audits, the Commission delegates to the Bureau the authority to implement and create procedures to perform such audits.

33. In the *FNPRM,* the Commission intends any changes adopted to apply to AWS licenses currently scheduled to be offered in an auction beginning June 29, 2006. The Commission noted that in light of the current auction schedule, any changes that it adopts may become effective after the deadline for filing applications to participate in that auction. The Commission sought comment on its proposal to require applicants to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to § 1.2110 of the Commission's rules effective as of the date of the statement. The Commission also notes that in the event applicants fail to file such a statement pursuant to procedures announced by public notice, they will be ineligible to qualify as a designated entity.

34. The vast majority of commenters did not address this issue. Under Commission rules, applicants asserting designated entity eligibility in a Commission auction are required to declare, under penalty of perjury, that they are qualified as a designated entity under § 1.2110 of the Commission's rules. After reviewing the record and considering the public interest benefits associated with the Commission's proposal, the Commission will require entities applying as designated entities to amend their applications for the AWS auction on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to § 1.2110 of

the Commission's rules effective as of the date of the statement.

II. Conclusion

35. The Commission modifies its rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding.

III. Procedural Matters

36. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis.

IV. Final Regulatory Flexability Analysis

37. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the FNPRM of proposed Rule Making (*FNPRM*) in WT Docket No. 05–211. The Commission sought written public comment in the FNPRM on possible changes to its competitive bidding rules, as well as on the IRFA. One commenter addressed the IRFA. This Final Regulatory Flexibility Analysis conforms to the IRFA.

A. Need for, and Objectives of, the Second Report and Order

38. The *Second Report and Order* adopts modifications to the Commission's rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding. Over the last decade, the Commission has engaged in numerous rulemakings and adjudicatory investigations to prevent companies from circumventing the objectives of the designated entity eligibility rules. To that end, in determining whether to award designated entity benefits, the Commission adopted a strict eligibility standard that focused on whether the applicant maintained control of the corporate entity. The Commission's objective in employing such a standard was to deter the establishment of sham companies in a manner that permits easy resolution of eligibility issues without the delay of administrative hearings. The Commission intends its small business provisions to be available only to bona fide small businesses.

39. Consequently, the rules as modified by the *Second Report and Order* provide that certain material relationships of an applicant for designated entity benefits will be a factor in determining the applicant's eligibility. The *Second Report and Order* provides that if an applicant or licensee has agreements that together enable it to lease or resell more than 50 percent of the spectrum capacity of any individual licenses, the applicant or licensee will be ineligible for designated entity benefits. Further, the *Second Report and Order* also provides that if an applicant or licensee has agreements with any other entity, including entities or individuals attributable to that other entity that enable the applicant or licensee to lease or resell more than 25 percent of the spectrum capacity of any individual licenses, the other entity will be attributed to the applicant or licensee when determining the applicant's or licensee's eligibility for designated entity benefits. Finally, the modifications of the *Second Report and Order* strengthen the Commission's unjust enrichment rules to better deter attempts at circumvention and to recapture designated entity benefits when there has been a change in eligibility on a license-by-license basis. Similarly, to ensure its continued ability to safeguard the award of designated entity benefits, the Commission provides clarification regarding how it will implement its rules concerning audits and refines its rules with respect to the reporting obligations of designated entities.

40. These rule modifications will enhance the Commission's ability to carry out Congress's statutory plan in accordance with the intent of Congress that every recipient of designated entity benefits uses its licenses directly to provide facilities-based telecommunications services for the benefit of the public. In making these changes to the rules, the Commission takes another important step in fulfilling its statutory mandate to facilitate the participation of small businesses in the provision of spectrum based services.

B. Summary of Significant Issues Raised by Public Comment in Response to the IRFA

41. The National Telecommunications Cooperative Association filed comments in response to the IRFA stating, among other things, that the Commission must take steps to minimize the economic impact of its proposed rules on small entities. NTCA asserts that the Commission must tailor its rules narrowly enough to target only real abuse, rather than capturing all rural telephone companies with any ties to a large in-region wireless provider, or it should exempt rural telephone companies from the rules' provision.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

42. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small organization, small business, and small governmental jurisdiction. The term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

43. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term small governmental jurisdiction is defined generally as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

44. The changes and additions to the Commission's rules adopted in the *Second Report and Order* are of general applicability to all services, applying to all entities of any size that seek eligibility to participate in Commission auctions as a designated entity and/or that hold licenses won through competitive bidding that are subject to designated entity benefits. Accordingly, this FRFA provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1,975 out of a total of 3,545 qualified bidders either have claimed eligibility for small business bidding credits or have self-reported their status as small businesses as that term has been defined under rules adopted by the Commission for specific services. In addition, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of

small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of changes in control, changes in material relationships or assignments or transfers, unjust enrichment issues are implicated.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

45. The Commission will require additional information from applicants in order to ensure compliance with the policies and rules adopted by the *Second Report and Order*. For example, designated entity applicants that have filed applications to participate in an auction for which bidding will begin on or after the effective date of the rules, will be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to the Commission's rules effective as of the date of the statement. In addition, the Commission adopts rules to make modifications, as necessary, to FCC forms related to auction, licensing, and leasing applications. Specifically, the modifications will require that designated entities report any relevant material relationship(s), as defined in newly adopted sections of 1.2110, reached after the date the rules are published in the **Federal Register**, even if the material relationship between the designated entity and the other entity would not have triggered a reporting requirement under the rules prior to the *Second Report and Order.*

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

46. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.

47. The *FNPRM* sought comment on several options for modifying its designated entity eligibility rules and specifically sought comment from small entities. The options included various ways to consider whether the Commission should award designated entity benefits where an applicant for such benefits also had financial or operational agreements with a larger entity. In considering these options, for the purposes of determining designated entity eligibility, the Commission defined the effect of entering certain agreements. By adopting the rules in the *Second Report and Order,* the Commission will enhance its ability to carry out Congress's statutory plan that every recipient of designated entity benefits uses their licenses directly to provide facilities-based telecommunications services, for the benefit of the public.

F. Report to Congress

48. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *Second Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Paperwork Reduction Analysis

49. The *Second Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act Of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(D) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(C)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

50. In the *Second Report and Order,* the Commission has assessed the effects of its new restriction on the award of designated entity benefits where an applicant or licensee has agreements that create a material relationship with one or more other entities for the lease (under either spectrum manager or *de facto* transfer leasing arrangements) or resale (including under a wholesale arrangement) of a portion of its spectrum capacity. The Commission finds that the rule it adopts will best ensure that it can continue to award designated entity benefits to entities that Congress intended. While the new rule may impose a new information collection on small businesses, including those with fewer than 25 employees, the Commission concludes that this information collection is necessary to ensure that the benefits of its designated entity program are reserved only for legitimate small businesses.

VI. Congressional Review Act

51. The Commission will include a copy of the *Second Report and Order and Second Further Notice of Proposed Rule Making* in a report it will send to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1(A).

VII. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 309(j), the *Second Report and Order* is hereby *adopted* and part 1, subpart Q of the Commission's rules, 47 CFR Part 1, is amended as set forth in Appendix B of the *Second Report and Order,* effective 30 days after publication in the **Federal Register**, except for the grandfathering provisions which are effective upon release.

53. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

54. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Second Report and Order and Second Further Notice,* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Auctions, Licensing, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. In § 1.913, paragraph (a) introductory text and the first sentence of paragraph (b) introductory text are revised and paragraph (a)(6) is added to read as follows:

§ 1.913 Application and notification forms; electronic and manual filing.

(a) *Application and notification forms.* Applicants, licensees, and spectrum lessees (see § 1.9003) shall use the following forms and associated schedules for all applications and notifications:

* * * * *

(6) FCC Form 609, Application to Report Eligibility Event. FCC Form 609 is used by licensees to apply for Commission approval of reportable eligibility events, as defined in § 1.2114.

(b) *Electronic filing.* Except as specified in paragraph (d) of this section or elsewhere in this chapter, all applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS. * * *

* * * * *

■ 3. In § 1.919 revise paragraph (b) introductory text and add paragraph (b)(5) to read as follows:

§ 1.919 Ownership information.

* * * * *

(b) Any applicant or licensee that is subject to the reporting requirements of § 1.2112 or § 1.2114 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form 602 is not current, at the time it submits:

* * * * *

(5) An application reporting any reportable eligibility event, as defined in § 1.2114.

* * * * *

■ 4. Revise paragraph (a)(2)(ii)(B) of § 1.2105 to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) * * *

(2) * * *

(ii) * * *

(B) Applicant ownership and other information, as set forth in § 1.2112.

* * * * *

■ 5. In § 1.2110, paragraphs (b)(1)(i), (b)(1)(ii), and (j) are revised, paragraphs (n) and (o) are redesignated as paragraphs (o) and (p), and paragraphs (b)(3)(iv) and (n) are added to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(1) * * *

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

* * * * *

(3) * * *

(iv) *Applicants or licensees with material relationships*—(A) *Impermissible material relationships.* An applicant or licensee that would otherwise be eligible for designated entity benefits under this section and applicable service-specific rules shall be ineligible for such benefits if the applicant or licensee has an impermissible material relationship. An applicant or licensee has an impermissible material relationship when it has arrangements with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant's or licensee's licenses.

(B) *Attributable material relationships.* An applicant or licensee must attribute the gross revenues (and, if applicable, the total assets) of any entity, (including the controlling interests, affiliates, and affiliates of the controlling interests of that entity) with which the applicant or licensee has an attributable material relationship. An applicant or licensee has an attributable material relationship when it has one or more arrangements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any one of the applicant's or licensee's licenses.

(C) *Grandfathering*—(*1*) *Licensees.* An impermissible or attributable material relationship shall not disqualify a licensee for previously awarded benefits with respect to a license awarded before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006.

(2) Applicants. An impermissible or attributable material relationship shall not disqualify an applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006. Any applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed after April 25, 2006, or in an application to participate in an auction in which bidding begins on or after June 5, 2006, need not attribute the material relationship(s) of those entities that are its affiliates based solely on § 1.2110(c)(5)(i)(C) if those affiliates entered into such material relationship(s) before April 25, 2006, and are subject to a contractual prohibition preventing them from contributing to the applicant's total financing.

Example to paragraph (b)(3)(iv)(C)*(2)*: Newco is an applicant seeking designated entity status in an auction in which bidding begins after the effective date of the rules. Investor is a controlling interest of Newco. Investor also is a controlling interest of Existing DE. Existing DE previously was

awarded designated entity benefits and has impermissible material relationships based on leasing agreements entered into before April 25, 2006, with a third party, Lessee, that were in compliance with the Commission's designated eligibility standards prior to April 25, 2006. In this example, Newco would not be prohibited from acquiring designated entity benefits solely because of the existing impermissible material relationships of its affiliate, Existing DE. Newco, Investor, and Existing DE, however, would need to enter into a contractual prohibition that prevents Existing DE from contributing to the total financing of Newco.

* * * * *

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and all other agreements, including oral agreements, establishing, as applicable, de facto or *de jure* control of the entity or the presence or absence of impermissible and attributable material relationships. Designated entities also must provide the date(s) on which they entered into each of the agreements listed. In addition, designated entities must file with their long-form applications a copy of each such agreement. In order to enable the Commission to audit designated entity eligibility on an ongoing basis, designated entities that are awarded eligibility must, for the term of the license, maintain at their facilities or with their designated agents the lists, summaries, dates, and copies of agreements required to be identified and provided to the Commission pursuant to this paragraph and to § 1.2114.

* * * * *

(n) *Annual reports*. Each designated entity licensee must file with the Commission an annual report within five business days before the anniversary date of the designated entity's license grant. The annual report shall include, at a minimum, a list and summaries of all agreements and arrangements (including proposed agreements and arrangements) that relate to eligibility for designated entity benefits. In addition to a summary of each agreement or arrangement, this list must include the parties (including affiliates, controlling interests, and affiliates of controlling interests) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement. Annual reports will be filed no later than, and up to five business days before, the anniversary of the designated entity's license grant.

* * * * *

■ 6. Revise paragraphs (a), (b) introductory text, the first sentence of paragraph (c)(2), the first sentence of paragraph (c)(3), and paragraphs (d)(1) and (d)(2) of § 1.2111 to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) *Reporting requirement*. An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission's statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (see § 1.948). This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-aside*. As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of, or for entry into a material relationship (see §§ 1.2110, 1.2114) (otherwise permitted under the Commission's rules) involving, a license acquired by the applicant pursuant to a set-aside for eligible designated entities under § 1.2110(c), or which proposes to take any other action relating to ownership or control that will result in loss of eligibility as a designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No payment will be required if:

* * * * *

(c) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. * * *

(3) If a licensee seeks to make any change in ownership or to enter into a material relationship (see § 1.2110) that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. * * *

(d) * * *

(1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding

credit for which the licensee would qualify after restructuring or entry into a material relationship), plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer or of a reportable eligibility event (see § 1.2114).

(2) *Payment schedule.* (i) The amount of payments made pursuant to paragraph (d)(1) of this section will be 100 percent of the value of the bidding credit prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met. If the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met, the amount of the payments will be reduced over time as follows:

(A) A loss of eligibility in the first five years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 100 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(B) A loss of eligibility in years 6 and 7 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 75 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(C) A loss of eligibility in years 8 and 9 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 50 percent of the difference between the bidding credit received and the bidding credit for which it is eligible); and

(D) A loss of eligibility in year 10 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 25 percent of the difference between the bidding credit received and the bidding credit for which it is eligible).

(ii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, ownership change, or reportable eligibility event (see § 1.2114).

* * * * *

■ 7. In § 1.2112, redesignate paragraph (b)(1)(iii) as (b)(1)(iv), add new paragraphs (b)(1)(iii) and (b)(2)(iv), and revise newly designated paragraphs (b)(1)(iv), (b)(2)(iii), and (b)(2)(v) to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

* * * * *

(b) * * *

(1) * * *

(iii) List all parties with which the applicant has entered into arrangements for the spectrum lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum.

(iv) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship; and if a consortium of small businesses, the members comprising the consortium.

* * * * *

(2) * * *

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of de facto or *de jure* control or the presence or absence of impermissible and attributable material relationships. Such agreements and instruments include articles of incorporation and bylaws, partnership agreements, shareholder agreements, voting or other trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and any other relevant agreements (including letters of intent), oral or written;

* * * * *

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, affiliates of its controlling interests, and parties with which it has attributable material relationships; and if a consortium of small businesses, the members comprising the consortium; and

* * * * *

(vii) List and summarize any agreements in which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the spectrum capacity of the license that is the subject of the application.

■ 8. Add new § 1.2114 to read as follows:

§ 1.2114 Reporting of eligibility event.

(a) A designated entity must seek Commission approval for all reportable eligibility events. A reportable eligibility event is:

(1) Any spectrum lease (as defined in § 1.9003) or resale arrangement (including wholesale agreements) with one entity or on a cumulative basis that would cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under § 1.2110 and applicable service-specific rules.

(2) Any other event that would lead to a change in the eligibility of a licensee for designated entity benefits.

(b) *Documents listed on and filed with application.* A designated entity filing an application pursuant to this section must—

(1) List and summarize on the application all agreements and arrangements (including proposed agreements and arrangements) that give rise to or otherwise relate to a reportable eligibility event. In addition to a summary of each agreement or arrangement, this list must include the parties (including each party's affiliates, its controlling interests, the affiliates of its controlling interests, its spectrum lessees, and its spectrum resellers and wholesalers) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(2) File with the application a copy of each agreement and arrangement listed pursuant to this paragraph.

(3) Maintain at its facilities or with its designated agents, for the term of the license, the lists, summaries, dates, and copies of agreements and arrangements required to be provided to the Commission pursuant to this section.

(c) *Application fees.* The application reporting the eligibility event will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102.

(d) *Streamlined approval procedures.* (1) The eligibility event application will be placed on public notice once the application is sufficiently complete and accepted for filing (see § 1.933).

(2) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that

such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.

(3) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will grant the application, deny the application, or remove the application from streamlined processing for further review.

(4) Grant of the application will be reflected in a Public Notice (see § 1.933(a)(2)) promptly issued after the grant.

(5) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of that Public Notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(e) *Public notice of application.* Applications under this subpart will be placed on an informational public notice on a weekly basis (see § 1.933(a)).

(f) *Contents of the application.* The application must contain all information requested on the applicable form, any additional information and certifications required by the rules in this chapter, and any rules pertaining to the specific service for which the application is filed.

(g) The designated entity is required to update any change in a relationship that gave rise to a reportable eligibility event.

[FR Doc. 06–4257 Filed 5–3–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D. 042406A]

RIN 0648–AT34

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2006 Management Measures and a Temporary Rule

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

ACTION: Final rule; and a temporary rule for emergency action; request for comments.

SUMMARY: NMFS establishes fishery management measures for the 2006 ocean salmon fisheries off Washington, Oregon, and California and the 2007 salmon seasons opening earlier than May 1, 2007. The temporary rule for emergency action, under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements the 2006 annual management measures for the west coast ocean salmon fisheries for the area from Cape Falcon, OR, to Point Sur, CA, from May 1 to August 31, 2006. The emergency rule is required because Klamath River fall Chinook (KRFC) are projected to not meet their conservation objective, or escapement floor, of 35,000 adult natural spawners established in the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide for inside fisheries (fisheries occurring in state internal waters).

DATES: Amendments to 50 CFR 660.410(a), (b)(1), (b)(4), and (d) are effective from 0001 hours Pacific daylight time, May 1, 2006, through 2359 hours Pacific daylight time, August 31, 2006. The remaining uncodified management measures, including the measures that apply from Cape Falcon to Pt. Sur beginning September 1, 2006, are effective from 0001 hours Pacific Daylight Time, May 1, 2006, until the effective date of the 2007 management measures, as published in the **Federal Register**.

Comments must be received by May 19, 2006.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070, fax: 206–526–6376; or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, fax: 562–980–4018. Comments can also be submitted via e-mail at the *2006oceansalmonregs.nwr@noaa.gov* address, or through the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include ''RIN 0648–AT34'' in the subject line of the message.

Copies of the FONSI and its supporting EA and other documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384, and are posted on its Web site *http://www.pcouncil.org*.

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses listed above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by facsimile (fax) at (202) 395–7285

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6140, or Mark Helvey at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Salmon FMP. Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

These management measures for the 2006 and pre-May 2007 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 3 to 7, 2006, meeting.

Schedule Used To Establish 2006 Management Measures

The Council announced its annual preseason management process for the 2006 ocean salmon fisheries in the **Federal Register** on December 28, 2005 (70 FR 76783). This notice announced the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for

the March and April Council meetings were published in subsequent **Federal Register** documents prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared a series of reports for the Council, its advisors, and the public. The first of the reports was prepared in February when the scientific information first necessary for crafting management measures for the 2006 and pre-May 2007 ocean salmon fishery became available. The first report, ''Review of 2005 Ocean Salmon Fisheries'' (REVIEW), summarizes biological and socio-economic data for the 2005 ocean salmon fisheries and assesses how well the Council's 2005 management objectives were met. The second report, ''Preseason Report I Stock Abundance Analysis for 2006 Ocean Salmon Fisheries'' (PRE I), provides the 2006 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2005 regulations and regulatory procedures were applied to the projected 2006 stock abundances. The completion of PRE I is the initial step in evaluating the full suite of preseason options.

The Council met in Seattle, WA, from March 6 to 10, 2006, to develop 2006 management options. The Council proposed three options of commercial and recreational fisheries management for analysis and public comment. These options consisted of various combinations of management measures designed to protect weak stocks of coho and Chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, ''Preseason Report II Analysis of Proposed Regulatory Options for 2006 Ocean Salmon Fisheries,'' which analyzes the effects of the proposed 2006 management options. This report was made available to the Council, its advisors, and the public.

Public hearings, sponsored by the Council, to receive testimony on the proposed options were held on: March 27, 2006, in Westport, WA, and Coos Bay, OR; and March 28, 2006, in Santa Rosa, CA. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office.

The Council met from April 3 to 7, 2006, in Sacramento, CA, to take additional public comment and to adopt its final 2006 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2006 Ocean Salmon Fisheries,'' which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report was also made available to the Council, its advisors, and the public. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter and also posted them on the Council Web site *www.pcouncil.org*.

Resource Status

Since 1989, NMFS has listed under the Endangered Species Act (ESA) 27 evolutionarily significant units (ESUs) of salmonids on the west coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions, and made determinations under section 4(d) of the ESA, that consider the impacts to listed salmonid species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures. Associated with the biological opinions are incidental take statements which specify the level of take that is expected. Some of the biological opinions have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed ESUs and provided incidental take statements. Other biological opinions have found the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (RPA) or consultation standards that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration, and provided an incidental take statement for the reasonable and prudent alternative. In a March 6, 2006, letter to the Council, NMFS provided the Council with ESA consultation standards and guidance for the management of stocks listed under the ESA in preparation for the 2006 management season in order to ensure that the Council recommendations comply with the ESA.

Estimates of the 2006 spawning escapements for key stocks managed under the Salmon FMP and preseason estimates of 2006 ocean abundance are provided in the Council's REVIEW and PRE I documents. The primary resource and management concerns are for salmon stocks listed under the ESA. However, this year KRFC are also a concern as explained below.

Lower Columbia River (LCR) coho were listed as threatened under the ESA on June 28, 2005 (70 FR 37160). As a result, this is the first year that LCR coho have been the subject of a section 7 consultation during the Council's preseason planning process. As a consequence of this consultation, the Council and associated state agencies made substantial changes in past management practice. Previously, ocean harvest impacts to LCR coho were estimated using Oregon Coast Natural (OCN) coho as a surrogate. In 2006, model procedures were changed to rely instead on LCR early- and late-timing hatchery stocks. In prior years, ocean fisheries were also managed using a harvest matrix that specified an allowable harvest rate depending on indicators of brood year escapement and survival. Given the circumstances in 2006, the harvest matrix would have allowed an OCN harvest rate of 15 percent and an in-river harvest rate of 7.5 percent. Because of uncertainties related to the status of LCR coho, and pending review and development of a more comprehensive long-term management strategy, NMFS guidance was to manage Council area fisheries and those in mainstem Columbia River subject to a total exploitation rate of 15 percent or less. As a consequence of this guidance, the 2006 ocean fisheries are expected to have an exploitation rate of 9.9 percent. This represents a 33 percent reduction in harvest impacts from what would have been allowed under the prior harvest matrix.

These ESA related changes in assessment methods and harvest limits substantially reduced harvest opportunity in fisheries north of Cape Falcon, OR. The coho quota for the area north of Cape Falcon in 2006 is 117,500 fish compared to a quota of 195,000 in 2005.

NMFS also consulted previously on LCR Chinook. The indicator stock for the tule component of the LCR Chinook ESU is from the Coweeman River. NMFS guidance for the Coweeman tule fall Chinook is to limit the combined impact of all fisheries to a 49 percent brood year exploitation rate. As a consequence of a post season review by the NMFS' Northwest Fisheries Science Center in 2005, it became apparent that actual exploitation rates in recent years had been higher than 49 percent, averaged on the order of 60 percent. In response, the Council's STT made

changes in the methods for modeling harvest to correct for the apparent bias in preseason estimates. These changes resulted in the need for conservative management and also placed new constraints on fisheries north of Cape Falcon. The expected exploitation rates associated with the fisheries in 2006 on Coweeman, and other fisheries where tule fall Chinook are caught, is 47.2 percent.

An additional factor compounding the 2006 salmon management process was the unexpectedly high age-4 contact rates of KRFC in various fisheries along the Pacific Coast and the implications for conservation measures linked to threatened California Coastal Chinook (CCC). The 2000 CCC biological opinion, as amended in 2002, established an RPA that requires the Pacific ocean salmon fisheries to be managed to a pre-season projected KRFC age-4 harvest rate of 16 percent or less. This KRFC age-4 harvest rate is used as a proxy for the protection of listed CCC. The Klamath Ocean Harvest Model (KOHM) substantially underestimated the age-4 ocean harvest rate for KRFC the last three years. In 2003, 2004, and 2005 the projected pre-season harvest rates were 16 percent, 15 percent, and 7.7 percent, respectively, but the actual post-season harvest rate estimates were 23 percent, 52 percent, and 23.9 percent.

NMFS, Southwest Region (SWR), reinitiated consultation on the 2000 CCC biological opinion in 2005 that included an analytical review of the KOHM by the Council's STT and a detailed description of the events and dynamics surrounding the 2003 and 2004 ocean salmon seasons. The consultation was completed on June 13, 2005. The 2005 consultation concluded that the jeopardy determination made in the 2000 opinion was still appropriate and placed additional requirements on NMFS to implement parts 1 and 2 of the RPA. The first requirement stipulated that if the KOHM were to substantially under-predict the age-4 harvest rate again in 2005, that NMFS, in cooperation with the Council and STT would modify the KOHM to more heavily weight data observed in recent years. Since the 2005 post-season estimate was approximately three times the pre-season projection, the STT modified the KOHM to more accurately represent recent trends in effort and contact rate per unit effort. These changes to the model provide a more conservative approach for age-4 KRFC harvest rate estimation. The second requirement was to initiate a study to determine the feasibility of characterizing the ocean catch and distribution of CCC relative to other stocks using Genetic Stock Identification techniques. Work on the feasibility study is underway and the SWR is engaged in planning for implementation of the study in cooperation with NMFS' Southwest Fisheries Science Center and other relevant state and Federal agencies. These two actions fulfill the requirements of the 2005 consultation. Because of constraints explained below related to KRFC, the projected age-4 harvest rate for KRFC is estimated to be 11.5 percent, which is below the 16 percent pre-season age-4 harvest rate target. Considering this projection was made with a more conservative KOHM than was used in the past and additional restrictions on the commercial salmon fishery (*e.g.*, a limit of 75 Chinook or fewer per week per vessel) are being implemented, the fishery is being managed in compliance with the requirements of the biological opinion. Therefore, the 2000 CCC biological opinion (and the ITS) still provides the necessary ESA take exemption for the 2006 ocean salmon fisheries.

Snake River fall Chinook are listed under the ESA as a threatened species. Direct information on the stock's ocean distribution and on fishery impacts is not available. Fishery impacts on Snake River fall Chinook are evaluated using the Lyons Ferry Hatchery stock as an indicator. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska. NMFS' ESA consultation standard requires that Council fisheries be managed to ensure that the Adult Equivalent (AEQ) exploitation rate on age-3 and age-4 adults for the combined Southeast Alaska, Canadian, and Council fisheries is not greater than 70 percent of that observed during the 1988–1993 base period. The 2006 fisheries, combined with expected impacts in Southeast Alaska and Canada fisheries, have an estimated age ¾ AEQ exploitation rate that is 64.1 percent of that observed during the 1988–1993 base period. Meeting the Snake River fall Chinook age ¾ AEQ exploitation rate was not a primary constraint on fisheries north of Cape Falcon.

This is the seventh year that NMFS provided guidance to the Council related to the Puget Sound Chinook ESU. NMFS' guidance for Puget Sound Chinook stocks is expressed in terms of total or southern U.S. fishery exploitation rate ceilings, or terminal escapement objectives. Under the current management structure, Council fisheries are included as part of the suite of fisheries that comprise the fishing regime negotiated each year by the co-managers under *U.S.* v. *Washington*, Civ. N. 70–9213 (W.D. Wash.) to meet management objectives for Puget Sound and Washington Coastal salmon stocks. Because these management objectives and the management planning structure address fisheries wherever they occur, Council and Puget Sound fisheries are interconnected. Therefore, in adopting its regulations, the Council recommends fisheries in the ocean that when combined with Puget Sound fisheries meet conservation objectives under Limit 6 of the 4(d) Rule. NMFS estimated that the exploitation rates from Council-managed fisheries on Puget Sound Chinook populations will range from zero to seven percent. Management actions taken to meet exploitation rate and escapement targets will, therefore, occur primarily in the Puget Sound fisheries, but the nature of the existing process is such that ocean fishery impacts must be accounted for as part of meeting comprehensive harvest management objectives.

In March 2005, NMFS approved fishing activities conducted in accordance with the harvest component of the Comprehensive Management Plan for Puget Sound Chinook, a Resource Management Plan (RMP) submitted by the Washington Department of Fish and Wildlife and the Puget Sound Treaty tribes under Limit 6 of the ESA 4(d) rule. The terms of the RMP have also been incorporated into the Draft Puget Sound Salmon Recovery Plan currently out for public review and comment. The take limit for fisheries implemented under the terms of the RMP apply to the 2005–2009 fishing years (May 1, 2005 through April 30, 2010). The RMP management approach consists of a two tiered harvest regime (normal and minimum), depending on stock status. The harvest objectives in the RMP are a mixture of total and southern U.S. exploitation rates (termed in the RMP—Rebuilding Exploitation Rates or RERs) and escapement goals. Under conditions of normal abundance, the RERs and escapement goals apply. However, when a particular management unit is (1) not expected to meet its low abundance threshold, or, (2) if the total exploitation rate is projected to exceed its RER under a proposed set of fisheries, the co-managers will constrain their fisheries such that either the RER is not exceeded, or the Critical Exploitation Rate Ceiling is not exceeded. The Council's proposed fisheries, in addition to anticipated inside fisheries, are consistent with the consultation standards for all of the Puget Sound indicator stocks.

Sacramento River winter Chinook are listed as endangered under the ESA.

The Council's recommended management measures meet NMFS's requirements for the stock established through the ESA section 7 consultation process.

Southern resident killer whales were recently listed as endangered under the ESA effective February 16, 2006. NMFS has initiated a Section 7 consultation regarding the effects of Council salmon fisheries on southern resident killer whales. NMFS expects to complete a ESA section 7 consultation by June 2006. In the event that the review suggests that further constraints in the 2006 fisheries are necessary, appropriate corrections will be made by NMFS through inseason action.

Emergency Rule

The Council's final recommendation for the ocean salmon fishery seasons that commence May 1st deviates from the Salmon FMP specifically in regard to meeting the conservation objective, or escapement floor, of 35,000 adult natural KRFC spawners. Under this circumstance, implementation of an Emergency Action under Magnuson-Stevens Act authority at section 305(c)(2)(B) is necessary to modify the conservation objective in the Salmon FMP in order to implement the Council's proposal. The Temporary Rule for Emergency Action applies to the area from Cape Falcon, OR, to Point Sur, CA. These regulations close a majority of the commercial fisheries and greatly reduce the recreational fisheries in this area off Oregon and California from May 1 through August 31, 2006.

The conservation objective for KRFC in the Salmon FMP requires a return of 33–34 percent of potential adult natural spawners, but no fewer than 35,000 naturally spawning adults, in any one year. The preseason forecast for KRFC for 2006 is close to the record low, although actual run sizes have been lower in several prior years. Preseason estimates indicate that, if the ocean fishery was closed from January through August 2006, between Cape Falcon, OR, and Point Sur, CA (near Monterey), and assuming the tribes catch their allocation of fish in the river, the expected number of natural area adult spawners would be 25,400. Under the Salmon FMP, a ''conservation alert'' is triggered when a stock is projected to fall below its conservation objective. Under such circumstances the Council is required to close salmon fisheries within Council jurisdiction that impact the stock. Over 99 percent of KRFC are caught with other salmon stocks, including more abundant Central Valley fall-run Chinook, in commercial and recreational fisheries in the Klamath impact area from Cape Falcon to Point Sur. Because annual management measures must meet the Salmon FMP conservation objectives of all the key stocks, fishing seasons are usually limited by the necessity of meeting the requirements for the least abundant stock. The area that would be closed pursuant to the Salmon FMP would therefore include most of the Oregon coast and the northern half of California where KRFC are harvested at their highest rate. Given the circumstances, any fishing in the closed area would have to be approved by emergency rule to modify the Salmon FMP.

The process for setting this year's management measures was very controversial given the proposed reductions in fishing opportunities and potential closures. At both the March and April meetings, and the coastwide public hearings, there was a significant increase in participation and comments from the various fishing sectors regarding the proposed 2006 management measures. The majority of the comments expressed great concern that elimination of the ocean fisheries that impact KRFC would cause severe economic hardship to coastal communities from central California to central Oregon. Fishermen in these ports would have to forgo the opportunity to harvest other, stronger stocks of Chinook to preserve relatively few KRFC. Those testifying also spoke at length regarding concerns for the demise of the infrastructure that supports the fishing industry and thus the long-term consequences of a fishery closure or severe cutback in 2006. The Council, in trying to address the conservation concerns for KRFC while mitigating the adverse economic and social consequences, voted 13–1 to approve their final proposal which allows limited ocean fisheries that impact KRFC.

For NMFS, the key question in considering whether to approve the emergency rule was whether the proposed fisheries would jeopardize the capacity of the fishery to produce maximum sustained yield on a continuing basis. The NMFS Science Center report requested by NMFS focused on this question. The Council's Scientific and Statistical Committee provided comments and additional analysis to the Council on the Science Center report. The Council's STT also addressed questions related to the risks associated with low spawning escapement. The science advisory bodies all expressed concern about the risks related to the current circumstances, and contributing sources of uncertainty. However, although the advisors made the general point that reduced escapement increased the risk of depressing future production, they were unable to identify a particular point of elevated concern between Option III and an escapement level of approximately 20,000 natural spawners.

During its deliberations NMFS considered several factors that helped mitigate the qualitative perception of risk. Among these was a risk analysis included in the Science Centers' report that considered the probability that a very low recruitment would result from various levels of escapement that may occur in 2006. The magnitude of the probabilities varied greatly depending on the assumptions. But the results indicated that there was relatively little change in risk for the range of escapements between the no fishing option with an associated expected escapement of 25,400, and the expected escapement of 21,100 associated with the proposed season. Based on this analysis and other factors considered NMFS concluded that the marginal decrease in escapement that will result from the Council's proposed fisheries does not jeopardize the capacity of the fishery to produce maximum sustained yield on a continuing basis. NMFS further concluded that the limited fisheries in the Klamath impact area proposed for 2006 address the conservation concerns for KRFC while mitigating, to the degree possible, the adverse effects to the fishing community. The vote of the Council, and comments by the state Council representatives, in particular, reflect their concurrence with NMFS's conclusion. The Temporary Rule for Emergency Action to implement the 2006 annual management measures for the west coast ocean salmon fisheries covers the area from Cape Falcon, Oregon, to Point Sur, California.

Management Measures for 2006 Fisheries

The Council-recommended ocean harvest levels and management measures for 2006 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP as amended by the emergency modification to the KRFC escapement floor, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-

Stevens Act, U.S. obligations to Indian tribes with Federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. Accordingly, NMFS has adopted them.

North of Cape Falcon the 2006 management measures have a slightly lower Chinook quota and substantially lower coho quota relative to the 2005 season. The total allowable catch for 2006 is 65,000 Chinook and 80,000 marked hatchery coho; these fisheries are restricted to protect depressed Lower Columbia River wild coho, Lower Columbia River Chinook, Washington coastal coho, Puget Sound coho, OCN coho, Interior Fraser River coho, Puget Sound Chinook, and Snake River fall Chinook. Washington coastal and Puget Sound Chinook generally migrate to the far north and are not greatly affected by ocean harvests from Cape Falcon, OR, to the U.S.-Canada border. Nevertheless, ocean fisheries in combination with fisheries inside Puget Sound were restricted in order to meet ESA related conservation objectives for Puget Sound Chinook. North of Cape Alava, WA, the Council recommends a provision prohibiting retention of chum salmon during August and September to protect ESA listed Hood Canal summer chum. The Council has recommended such a prohibition for the last five years.

South of Cape Falcon, OR, Chinook fisheries off Oregon and California were dramatically reduced or closed because of concerns regarding KRFC's weak status. The retention of coho is prohibited, except for a recreational selective fishery off Oregon with a 20,000-fish quota of marked hatchery coho. This is the third year the selective fishery includes the southern coastal area off Oregon. The Council's recommendations are below the 15-percent exploitation rate permitted under Amendment 13 to protect OCN coho stocks, with an expected 9.6-percent OCN coho exploitation rate. The expected ocean exploitation rate for Rogue/Klamath coho is 5.2 percent, and is also below its exploitation rate limit of 13.0 percent.

Treaty Indian Fisheries for 2005

The treaty-Indian commercial troll fishery quota is 42,200 Chinook in ocean management areas and Washington State Statistical Area 4B combined. This quota is slightly lower than the 48,000-Chinook quota in 2005. The fisheries include a Chinook-directed fishery in May and June (under a quota of 22,700 Chinook) and an all-salmon season beginning in July with a 19,500 Chinook sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B for the July–September period is 37,500 coho, a decrease from the 50,000-coho quota in 2005.

Management Measures for 2007 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2007 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended, and NMFS concurs, that the recreational seasons off California from Horse Mountain to the U.S.-Mexico Border and off Oregon from Cape Falcon to Humbug Mountain, and the commercial troll seasons off California from Horse Mountain to Point Arena and off Oregon from Cape Falcon to the Oregon-California Border, will open in 2007 as indicated in the Season Description section. At the March 2007 meeting, the Council may consider inseason recommendations to adjust the commercial seasons that open prior to May 1.

Inseason Actions

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2006 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council and approved and implemented here for 2006 and, as specified, for 2007.

Section 1. Commercial Management Measures for 2006 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery. Each fishing area identified in part A specifies the fishing area by geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 30 or a 22,450 Chinook quota. Open May 1–2 with a 75 Chinook per vessel landing and possession limit for the two-day open period; beginning May 6, open Saturday through Tuesday with an 80 Chinook per vessel possession and landing limit for each four-day open period. If insufficient quota remains to prosecute openings prior to the June 24–27 open period, the remaining quota will be provided for a June 27–30 open period with a per vessel landing and possession limit to be determined inseason. All salmon except coho (C.7). Cape Flattery and Columbia Control Zones closed (C.5). See gear restrictions and definitions (C.2, C.3). Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, OR. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, WA, and Cape Falcon, OR, must notify Oregon Department of Fish and Wildlife (ODFW) within one hour of delivery or prior to transport away from the port of landing by calling 541–867–0300 Ext. 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

July 15 through earlier of September 15 or a 11,550 preseason Chinook guideline (C.8) or a 6,800 marked coho quota (C.8.d). Cape Flattery and Columbia Control Zones closed (C.5). Open Saturday through Tuesday July 15 through August 1. All salmon; landing and possession limit of 35 Chinook and 35 marked coho per vessel per four day open period (C.2, C.3). Open August 5 through September 15; Saturday through Monday. All salmon except no chum retention north of Cape Alava, WA, in August and September (C.7); landing and possession limit of 30 Chinook and 40 marked coho per vessel per three day open period. Gear

restricted to plugs 6 inches (15.2 cm) or longer (C.2, C.3) Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, OR. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, WA, and Cape Falcon, OR, must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling 541–867–0300 Ext. 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

South of Cape Falcon, OR

Cape Falcon to Florence South Jetty, OR (Newport)

June 4–7, 11–14, 18–21, 25–28; July 9–11, 16–18, 23–25; August 1–3; September 17–30; October 17–31 (C.9). All salmon except coho (C.7). Landing and possession limit of 75 Chinook per vessel per calendar week (Sunday through Saturday) during June, July, and August; 50 Chinook per calendar week September and October. Chinook 28 inch (71.1 cm) total length minimum size limit (B). All vessels fishing in the area must land their fish in the State of Oregon. See gear restrictions and definitions (C.2, C.3) and Oregon State regulations for a description of special regulations at the mouth of Tillamook Bay.

In 2007, the season will open March 15 for all salmon except coho, with a 28 inch (71.1 cm) total length Chinook minimum size limit. This opening could be modified following Council review at its March 2007 meeting.

Florence South Jetty to Humbug Mountain, OR (Coos Bay)

Closed (C.9).

In 2007, the season will open March 15 for all salmon except coho, with a 28 inch (71.1 cm) total length Chinook minimum size limit. This opening could be modified following Council review at its March 2007 meeting.

Humbug Mountain to Oregon-California Border (Oregon KMZ)

Closed (C.9).

In 2007, the season will open March 15 for all salmon except coho, with a 28 inch (71.1 cm) total length Chinook minimum size limit. This opening could be modified following Council review at its March 2007 meeting.

Oregon-California Border to Humboldt South Jetty, CA (California KMZ)

Closed (C.9).

Humboldt South Jetty to Horse Mountain, CA

Closed (C.9).

Horse Mountain to Point Arena, CA (Fort Bragg)

September 1 through the earlier of September 15 or a Chinook quota of 4,000 (C.9). All salmon except coho. Landing and possession limit of 30 Chinook per vessel per day. Fish caught in the area must be landed in the area (C.1). Chinook minimum size limit 27 inches (68.6 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

In 2007, the season will open March 15 for all salmon except coho, with a 27 inch (68.6 cm) total length Chinook minimum size limit (B). This opening could be modified following Council review at its March 2007 meeting.

Point Arena to Pigeon Point (San Francisco)

July 26–31; August 1–31; September 1 through the earlier of September 30 or a Chinook quota of 20,000 (C.9). All salmon except coho. Landing and possession limit of 75 Chinook per vessel per calendar week (Sunday through Saturday) during July and August; fish must be landed in an area south of Horse Mountain. In September, fish caught in the area must be landed in the area, or in an adjacent closed area, if that area has been closed for at least 96 hours (C.1). Chinook minimum size limit 28 inches (71.1 cm) total length in July and August; 27 inches (68.6 cm) total length in September (B). See gear restrictions and definitions (C.2, C.3).

Point Reyes to Point San Pedro, CA (Fall Area Target Zone)

October 2–6; 9–13. Open Monday through Friday. All salmon except coho. All fish caught in the area must be landed in the area between Point Arena and Pigeon Point (C.1). Chinook minimum size limit 26 inches (68.0 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

Pigeon Point to Point Sur (Monterey)

May 1–31; July 26–31; August 1–31; September 1–30 (C.9). All salmon except coho. Landing and possession limit of 75 Chinook per vessel per calendar week (Sunday through Saturday) during May, July, and August; fish must be landed in an area south of Point Arena. In September, fish must be landed in an area south of Pigeon Point, or in an adjacent closed area, if that area has been closed for at least 96 hours (C.1). Chinook minimum size limit 28 inches (71.1 cm) total length in July and August; 27 inches (68.6 cm) total length in May and September (B). See gear restrictions and definitions (C.2, C.3).

Point Sur to U.S.-Mexico Border

May 1 through September 30 (C.9). All salmon except coho. Fish must be landed south of Pigeon Point (C.1). Chinook minimum size limit 27 inches (68.6 cm) total length in May, June, and September; 28 inches (71.1 cm) total length in July and August (B). See gear restrictions and definitions (C.2, C.3).

B. Minimum Size (Inches) (See C.1)

Area (when open)	Chinook		Coho		
	Total length	Head-off	Total length	Head-off	Pink
North of Cape Falcon, OR	28.0	21.5	16.0	12.0	None
Cape Falcon to OR–CA Border	28.0	21.5	.....	.....	None
OR–CA Border to Horse Mountain, CA	.....	.....	.....	.....	None
Horse Mountain to Point Arena, CA	27.0	20.5	.....	.....	None
Pt. Arena to U.S.-Mexico Border:					
Prior to July 1 and from Sept. 1–30	27.0	20.5	.....	.....	None
July 1–August 31	28.0	21.5	.....	.....	None

Area (when open)	Chinook		Coho		
	Total length	Head-off	Total length	Head-off	Pink
October 3–14	26.0	19.5	.....	.....	None

Metric equivalents: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.5 in=52.1 cm, 19.5 in=49.5 cm, 16.0 in=40.6 cm, and 12.0 in=30.5 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open. Salmon may be landed in an area that has been closed more than 96 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may be landed in an area that has been closed less than 96 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the areas in which they were caught and landed.

States may require fish landing/receiving tickets be kept on board the vessel for 90 days after landing to account for all previous salmon landings.

C.2. *Gear Restrictions:*

a. Single point, single shank, barbless hooks are required in all fisheries.

b. *Cape Falcon, OR, to the Oregon-California border:* No more than 4 spreads are allowed per line.

c. *Oregon-California border to U.S.-Mexico border:* No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. *Gear Definitions:*

a. *Trolling defined:* Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

b. *Troll fishing gear defined:* One or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

c. *Spread defined:* A single leader connected to an individual lure or bait.

d. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. *Transit Through Closed Areas with Salmon on Board:* It is unlawful for a vessel to have troll or recreational gear in the water while transiting any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species and no salmon for which the area is closed are in possession.

C.5. *Control Zone Definitions:*

a. *Cape Flattery Control Zone:* The area from Cape Flattery, WA (48°23′00″ N. lat.), to the northern boundary of the U.S. EEZ; and the area from Cape Flattery, WA, south to Cape Alava, WA (48°10′00″ N. lat.), and east of 125°05′00″ W. long.

b. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

c. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations:* If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival.

C.7. *Incidental Halibut Harvest:* During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.3 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May–June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). ODFW and Washington Department of Fish and Wildlife (WDFW) will monitor landings. If the landings are projected to exceed the 41,464-lb. (18.8-mt) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery.

Beginning May 1, license holders may land no more than 1 Pacific halibut per each 3 Chinook, except 1 Pacific halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Pacific halibut retained must be no less than 32 inches (81.3 cm) in total length (with head on).

A ''C-shaped'' yelloweye rockfish conservation area is an area to be avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area boundary is defined in the Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), by straight lines connecting the

following coordinates in the order listed:

48°18′ N. lat.; 125°18′ W. long;
48°18′ N. lat.; 124°59′ W. long;
48°11′ N. lat.; 124°59′ W. long;
48°11′ N. lat.; 125°11′ W. long;
48°04′ N. lat.; 125°11′ W. long;
48°04′ N. lat.; 124°59′ W. long;
48°00′ N. lat.; 124°59′ W. long;
48°00′ N. lat.; 125°18′ W. long;
and connecting back to 48°18′ N. lat.; 125°18′ W. long.

C.8. *Inseason Management:* In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon, OR, may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

b. NMFS may transfer fish between the recreational and commercial fisheries north of Cape Falcon, OR, if there is agreement among the areas' representatives on the Salmon Advisory Subpanel.

c. At the March 2007 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2006).

d. If retention of unmarked coho is permitted in the area from the U.S.-Canada border to Cape Falcon, OR, by inseason action, the allowable coho quota will be adjusted to ensure preseason projected mortality of critical stocks is not exceeded.

C.9. *Consistent with Council management objectives:*

a. The State of Oregon may establish additional late-season, Chinook-only fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters.

Check state regulations for details.

C.10. For the purposes of California Department of Fish and Game Code, Section 8232.5, the definition of the Klamath Management Zone for the ocean salmon season shall be that area from Humbug Mountain, OR, to Horse Mountain, CA.

Section 2. Recreational Management Measures for 2006 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery. Each fishing area identified in part A specifies the fishing area by geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea)

June 30 through earlier of September 17 or a 7,058 marked coho subarea quota with a subarea guideline of 3,200 Chinook (C.6). Open Tuesday through Saturday. All salmon, except no chum retention August 1 through September 17, two fish per day, no more than one of which may be a Chinook (Chinook 24-inch (61.0 cm) total length minimum size limit) (B). All retained coho must be marked. See gear restrictions (C.2). Beginning August 1, Chinook non-retention east of the Bonilla-Tatoosh line (C.4.d) during Council managed ocean fishery. Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.4).

Cape Alava to Queets River, WA (La Push Subarea)

June 30 through earlier of September 17 or a 1,889 marked coho subarea quota with a subarea guideline of 1,300 Chinook; Open Tuesday through Saturday. September 23 through October 8 or a 50 marked coho quota or 100 Chinook quota; in the area north of 47°50′00″ N. Lat. and south of 48°00′00″ N. Lat. (C.5); open seven days per week (C.6). All salmon, two fish per day, no more than one of which may be a Chinook (Chinook 24-inch (61.0 cm) total length minimum size limit) (B). All retained coho must be marked. See gear restrictions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.4).

Queets River to Leadbetter Point, WA (Westport Subarea)

July 3 through earlier of September 17 or a 27,603 marked coho subarea quota with a subarea guideline of 18,100 Chinook (C.6). Open Sunday through Thursday. All salmon, two fish per day, no more than one of which may be a Chinook (Chinook 24-inch (61.0 cm) total length minimum size limit) (B). All retained coho must be marked. See gear restrictions and definitions (C.2, C.3). Beginning August 1, Grays Harbor Control Zone closed (C.4.b). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

Leadbetter Point to Cape Falcon, OR (Columbia River Subarea)

July 3 through earlier of September 30 or a 36,600 marked coho subarea quota with a subarea guideline of 8,300 Chinook (C.6). Open Sunday through Thursday. All salmon, two fish per day, no more than one of which may be a Chinook (Chinook 24-inch (61.0 cm) total length minimum size limit) (B). All retained coho must be marked with a healed adipose fin clip. See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4.a). Closed between Cape Falcon and Tillamook Head beginning August 1. Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

South of Cape Falcon, OR

Cape Falcon to Humbug Mountain, OR

Except as provided below during the selective fishery, the season will be March 15 through October 31 (C.6). All salmon except coho. Two fish per day (C.1). See gear restrictions and definitions (C.2, C.3).

Selective fishery: Cape Falcon to the Oregon-California Border. June 17 through earlier of July 31 or a landed catch of 20,000 marked coho, except that the area south of Humbug Mountain will close July 5–31, concurrent with the KMZ season listed below. If quota remains, September 1 through the earlier of September 6 or a landed catch of any remaining quota from the June 17 through July 31 fishery. Open seven days per week, all salmon, two fish per day (C.1). All retained coho must be marked with a healed adipose fin clip.

Fishing in the Stonewall Bank groundfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (see 71 FR 10850, March 3, 2006, and call the halibut fishing hotline 1–800–662–9825 for additional dates) (C.3, C.4.e). Open days may be adjusted inseason to utilize the available quota (C.5). All salmon except coho seasons reopen the day following the closure of the mark selective coho fishery.

In 2007, the season will open March 15 for all salmon except coho, two fish per day (C.1), Chinook minimum size limit of 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2006 (C.2, C.3).

Humbug Mountain to Horse Mountain, CA (Klamath Management Zone)

Except as provided above during the selective fishery, the season will be May 15 through July 4; and September 1–6 (C.6). All salmon except coho, except as noted above in the coho mark selective fishery. Chinook minimum size limit 24 inches (61.0 cm) total length (B). Open seven days per week, two fish per day (C.1). See gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed in August (C.4.c). See California State regulations for additional closures adjacent to the Smith, Klamath, and Eel rivers.

Horse Mountain to Point Arena, CA (Fort Bragg)

February 18 through May 31; June 1–4, 7–11, 14–18, 21–25, 28–30; July 1–9, 15–16, 22–23, 26–31; August 1 through November 12 (C.6). All salmon except coho. Two fish per day (C.1). Chinook minimum size limit 20 inches (50.8 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

In 2007, season opens February 17 (nearest Saturday to February 15) for all salmon except coho, two fish per day (C.1), Chinook minimum size limit of 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2006 (C.2, C.3).

Point Arena to Pigeon Point, CA (San Francisco)

April 1–30 inside 3 nm (5.6 km) (state waters only; C.6). May 1 through June 11; June 14 through July 9; July 12 through November 12 (C.6). All salmon except coho. Two fish per day (C.1). Chinook minimum size limit 20 inches (50.8 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

In 2007, the season will open April 7 for all salmon except coho, two fish per day (C.1), Chinook minimum size limit of 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2006 (C.2, C.3).

Pigeon Point to Point Sur (Monterey)

April 1–30 inside 3 nm (5.6 km) (state waters only; C.6). May 1 through September 24 (C.6). All salmon except coho. Two fish per day (C.1). Chinook minimum size limit 20 inches (50.8 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

In 2007, the season will open April 7 for all salmon except coho, two fish per day (C.1), Chinook minimum size limit of 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2006 (C.2, C.3).

Point Sur to U.S.-Mexico Border

April 1 through September 24 (C.6). All salmon except coho. Two fish per day (C.1). Chinook minimum size limit 20 inches (50.8 cm) total length (B). See gear restrictions and definitions (C.2, C.3).

In 2007, the season will open April 7 for all salmon except coho, two fish per day (C.1), Chinook minimum size limit of 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2006 (C.2, C.3).

B. Minimum Size (Total Length in Inches) (See C.1)

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon, OR	24.0	16.0	None.
Cape Falcon to Humbug Mt., CA	20.0	16.0	None.
Humbug Mt. to Horse Mt., CA	24.0	.....	None, except 20.0 off CA.
Horse Mt. to U.S.-Mexico Border	20.0	.....	20.0.

Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, 16.0 in=40.6 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. *Compliance with Minimum Size and Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished, and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of salmon for all licensed and juvenile anglers aboard has been attained (additional state restrictions may apply).

C.2. *Gear Restrictions:* All persons fishing for salmon, and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. *U.S.-Canada Border to Point Conception, CA:* No more than one rod may be used per angler; and single point, single shank barbless hooks are required for all fishing gear. Note: ODFW regulations in the state-water fishery off Tillamook Bay, OR, may allow the use of barbed hooks to be consistent with inside regulations.

b. *Cape Falcon, OR, to Point Conception, CA:* Anglers must use no more than 2 single point, single shank, barbless hooks.

c. *Horse Mountain to Point Conception, CA:* Single point, single shank, barbless circle hooks (see circle hook definition below) must be used if angling with bait by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. *Gear Definitions:*

a. *Recreational fishing gear defined:* Angling tackle consisting of a line with no more than one artificial lure or natural bait attached. Off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

c. *Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

C.4. *Control Zone Definitions:*

a. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

b. *Grays Harbor Control Zone:* The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°36′00″ N. lat., 124°10′51″ W. long.).

c. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

d. *Bonilla-Tatoosh Line:* Defined as a line running from the western end of Cape Flattery, WA, to Tatoosh Island Lighthouse (48°23′30″ N. lat., 124°44′12″ W. long.) to the buoy adjacent to Duntze Rock (48°28′00″ N. lat., 124°45′00″ W. long.), then in a straight line to Bonilla Point (48°35′30″ N. lat., 124°43′00″ W. long.) on Vancouver Island, B.C.

e. *Stonewall Bank Groundfish Conservation Area:* The area defined by the following coordinates in the order listed:

44°37.46 N. lat.; 124°24.92 W. long.;
44°37.46 N. lat.; 124°23.63 W. long.;
44°28.71 N. lat.; 124°21.80 W. long.;
44°28.71 N. lat.; 124°24.10 W. long.;
44°31.42 N. lat.; 124°25.47 W. long.;
and connecting back to 44°37.46 N. lat.;
124°24.92 W. long.

C.5. *Inseason Management:* Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon on an impact neutral basis to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's Salmon Advisory Subpanel (SAS) recreational representatives north of Cape Falcon.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon on an impact neutral basis if there is agreement among the representatives of the SAS.

d. If retention of unmarked coho is permitted in the area from the U.S.-Canada border to Cape Falcon, OR, by inseason action, the allowable coho quota will be adjusted to ensure preseason projected mortality of critical stocks is not exceeded.

C.6. *Additional Seasons in State Waters:* Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Oregon State-water fisheries are limited to Chinook salmon. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2006 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

U.S.-Canada Border to Cape Falcon, OR

May 1 through the earlier of June 30 or a 22,700 Chinook quota. All salmon except coho. If the Chinook quota for the May-June fishery is not fully utilized, the excess fish cannot be transferred into the later all-salmon season. If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season. See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or a 19,500 preseason Chinook quota, or a 37,500 coho quota. All salmon. See size limit (B) and other restrictions (C).

B. Minimum Size (Inches)

Area (when open) and fishery	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR					
Commercial	24.0	18.0	16.0	12.0	None
Ceremonial and Subsistence	None	None	None	None	None

Metric equivalents: 24.0 in=61.0 cm, 18.0 in=45.7 cm, 16.0in=40.6 cm, and 12.0 in=30.5 cm.

C. Special Requirements, Restrictions, and Exceptions

C.1 *Tribe and Area Boundaries:* All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

C.2 *Gear restrictions:*

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than 8 fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery

(Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.)

C.3 *Quotas:*

a. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Makah encounter rate study will occur between May 1 and September 15. Salmon taken in the study by treaty Indian vessels will be counted towards the overall treaty Indian troll quota.

c. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of September 15 through October 15 in the same manner as in 2004 and 2005. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2006 season (estimated harvest during the October ceremonial and subsistence fishery: 100 Chinook; 200 coho).

C.4 *Area Closures:*

a. The area within a 6-nautical mile (11.1-km) radius of the mouths of the Queets River, WA (47°31′42″ N. lat.) and the Hoh River, WA (47°45′12″ N. lat.) will be closed to commercial fishing.

b. A closure within 2-nautical miles (3.7 km) of the mouth of the Quinault River, WA (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. On March 3, 2006, NMFS published a final rule (71 FR 10850) to implement the International Pacific Halibut Commission's (IPHC) recommendations, to announce fishery regulations for U.S. waters off Alaska and fishery regulations for treaty commercial and ceremonial and subsistence fisheries, some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast, and approval of and implement the Area 2A Pacific halibut Catch Sharing Plan and the Area 2A management measures for 2006. The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during the May and June troll seasons. It is also authorized after June 30 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800–662–9825). License holders may land no more than 1 halibut per each 3 Chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm) total length (with head on). The ODFW and WDFW will monitor landings and, if they are projected to exceed the 41,464-lb. (18.8-mt) salmon troll allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' yelloweye rockfish conservation area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (WA marine area 3) (See Section 1.C.7. for the coordinates).

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA—48°23′00″ N. lat.
Cape Alava, WA—48°10′00″ N. lat.
Queets River, WA—47°31′42″ N. lat.
Leadbetter Point, WA—46°38′10″ N. lat.
Cape Falcon, OR—45°46′00″ N. lat.
Florence South Jetty, OR—44°00′54″ N. lat.
Humbug Mountain, OR—42°40′30″ N. lat.
Oregon-California Border—42°00′00″ N. lat.
Humboldt South Jetty, CA—40°45′53″ N. lat.
Horse Mountain, CA—40°05′00″ N. lat.
Point Arena, CA—38°57′30″ N. lat.
Point Reyes, CA—37°59′44″ N. lat.
Point San Pedro, CA—37°35′40″ N. lat.
Pigeon Point, CA—37°11′00″ N. lat.
Point Sur, CA—36°18′00″ N. lat.
Point Conception, CA—34°27′00″ N. lat.

Section 6. Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under Executive Order 12866.

The Assistant Administrator has determined that the measures described in the preamble that deviate from the framework FMP and its implementing regulations are necessary to respond to an emergency situation and are consistent with the Magnuson-Stevens Act and other applicable law. The measures falling under emergency authority of section 305(c) of the Magnuson-Stevens Act (emergency rule) involve an overall ocean harvest rate on Klamath River fall Chinook that will result in a projected Klamath fall Chinook spawning escapement of 21,100, below the floor of 35,000 naturally spawning adults. Therefore, it is necessary to amend those portions of the framework FMP and its implementing regulations by emergency action pursuant to 16 U.S.C. 1855(c).

The provisions of 50 CFR 660.411 state that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after the date of publication in the **Federal Register**. NMFS will receive public comments on this action until May 19, 2006. These regulations are being promulgated under the authority of 16 U.S.C. 1855(c) and (d).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time-frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January and February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period which culminates at the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval and implementation of fishing regulations effective on May 1.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the 2-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year without knowledge of current stock status. Although this is currently done for fisheries opening prior to May, relatively little harvest occurs during that period (*e.g.*, in 2005 less than 10 percent of commercial and recreational harvest occurred prior to May 1). Allowing the much more substantial harvest levels normally associated with the May and June seasons to be regulated in a similar way would impair NMFS' ability to protect weak and ESA listed stocks and provide harvest opportunity where appropriate.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action. For example, the 2006 forecast ocean abundance for KRFC requires closing the commercial seasons from Cape Falcon to Humbug Mountain, OR, in May, where these areas were open in May during the 2005 season. Without these, and similar restrictions in other areas in 2006, the projected KRFC natural spawning escapement would be even lower, which would increase the risk of jeopardizing the capacity of the fishery to produce maximum sustained yield on a continuing basis. In addition, in the commercial fishery north of Cape Falcon, the fishing periods are shorter and the landing and possession limits are lower in May in 2006 than they were in 2005 in order to protect LCR coho and Chinook stocks. Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The AA also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data are not available until February and management measures not finalized until early April. These measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. If these measures are not in place on May 1, the previous year's management measures will continue to apply. Failure to implement these measures immediately could compromise the status of certain stocks, such as the KRFC, and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is also posting the regulations on both of its West Coast regional Web sites at *http://www.nwr.noaa.gov* and *http://swr.nmfs.noaa.gov*. NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by OMB under Control Number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met, or to obtain temporary mooring in Brookings, OR, is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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 PRA, unless that collection of information displays a currently valid OMB control number.

Since 1989, NMFS has listed 27 ESUs of salmonids on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions, and made determinations under section 4(d) of the ESA (Table 1), that consider the impacts to listed salmonid species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures.

TABLE 1.—NMFS' ENDANGERED SPECIES ACT CONSULTATIONS AND SECTION 4(d) DETERMINATIONS RELATED TO OCEAN FISHERIES IMPLEMENTED UNDER THE SALMON FMP AND DURATION OF THE PROPOSED ACTION COVERED BY EACH

Date	Evolutionarily significant unit covered and effective period
March 8, 1996	Snake River Chinook and sockeye (until reinitiated).
April 28, 1999	Oregon coast coho, S. Oregon/N. California coast coho, Central California coast coho (until reinitiated).
April 28, 2000	Central Valley spring Chinook and California coast Chinook (until reinitiated).
April 27, 2001	Hood Canal summer chum 4(d) limit and associated biological opinion (until reinitiated).
April 30, 2001	Upper Willamette River Chinook, Upper Columbia River spring Chinook, Ozette Lake sockeye, ten steelhead ESUs, Columbia River chum (until reinitiated).
April 27, 2004	Sacramento River winter Chinook (until 2010).
April 29, 2004	Puget Sound Chinook and Lower Columbia River Chinook (until reinitiated).
April 27, 2006	Lower Columbia River coho (April 30, 2007).

Associated with the biological opinions are incidental take statements that specify the level of take that is expected. Some of the biological opinions have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed salmonid ESUs and provide incidental take statements. Other biological opinions have found that implementation of the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration, and provided an incidental take statement for the reasonable and prudent alternative.

In a March 6, 2006, letter to the Council, NMFS provided the Council with ESA consultation standards and guidance for the management of stocks listed under the ESA. These management measures are consistent with the biological opinions that find no jeopardy, with the reasonable and prudent alternatives in the jeopardy biological opinions, and with the terms of the state and Tribal RMPs.

Southern resident killer whales were recently listed as endangered under the ESA effective February 16, 2006. NMFS has initiated a Section 7 consultation regarding the effects of Council salmon fisheries on southern resident killer whales. NMFS expects to complete a ESA section 7 consultation by June 2006. In the event that the review suggests that further constraints in the 2006 fisheries are necessary, appropriate corrections will be made by NMFS through inseason action.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Indians.

Dated: April 28, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.410, paragraphs (a) and (b)(1) are suspended and paragraphs (b)(4) and (d) are added to read as follows:

§ 660.410 Conservation objectives.

* * * * *

(b) * * *

(4) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective.

* * * * *

(d) The conservation objectives are summarized in Table 3–1 of the Pacific Coast Salmon Plan, except that in 2006, the Klamath River fall Chinook will not be managed to meet the spawning escapement floor. Klamath River fall Chinook will be managed to protect its long-term productivity.

[FR Doc. 06–4179 Filed 4–28–06; 5:05 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 71, No. 86
Thursday, May 4, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 53

RIN 3150–AH81

Approaches to Risk-Informed and Performance-Based Requirements for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering modifying its approach to develop risk-informed and performance-based requirements applicable to nuclear power reactors. The NRC is considering an approach that, in addition to the ongoing effort to revise some specific regulations to make them risk-informed and performance-based, would establish a comprehensive set of risk-informed and performance-based requirements applicable for all nuclear power reactor technologies as an alternative to current requirements. This new rule would take advantage of operating experience, lessons learned from the current rulemaking activities, advances in the use of risk-informed technology, and would focus NRC and industry resources on the most risk-significant aspects of plant operations to better ensure public health and safety. The set of new alternative requirements would be intended primarily for new power reactors although they would be available to existing reactor licensees.

At the conclusion of this ANPR phase and taking into consideration public comment, the NRC will determine how to proceed regarding making the requirements for nuclear power plants risk-informed and performance-based.

DATES: The comment period expires December 29, 2006. This time period allows public comment on the proposals in this ANPR.

Comments on the general proposals in this ANPR would be most beneficial to the NRC if submitted within 90 days of issuance of the ANPR. Comments on any periodic updates will be most beneficial if submitted within 90 days of their respective issuance. Periodic updates that are issued will be placed on the NRC's interactive rulemaking Web site, Ruleforum, (*http://ruleforum.llnl.gov*), for information or comment. Supplements to this ANPR are anticipated to be issued and will request additional public comments.

Comments received after the above date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before the above date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH81 in the subject line of your comments. Comments on this ANPR submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this ANPR may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *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 Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Birmingham, Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2829, e-mail: *jlb4@nrc.gov;* or Mary Drouin, Office of Nuclear Regulatory Research (RES), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6675, e-mail: *mxd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC is considering developing a comprehensive set of risk-informed, performance-based, and technology neutral requirements for licensing nuclear power reactors. These requirements would be included in NRC regulations as a new 10 CFR Part 53 and could be used as an alternative to the existing requirements in 10 CFR Part 50.

The Commission directed the NRC staff to develop an ANPR to facilitate early stakeholder participation in this effort. The Commission also directed the NRC staff to: (1) Incorporate in the ANPR a formal program plan for risk-informing 10 CFR Part 50, as well as other related risk-informed efforts, (2) integrate safety, security, and preparedness throughout the effort and (3) include the effort to develop risk-informed and performance-based alternatives to the single failure criterion (ADAMS Accession Numbers

ML051290351, ML052570437, and ML052640492).

The NRC has conducted public meetings and workshops to engage interested stakeholders in dialogue on the merits of various approaches to risk-inform and performance-base the requirements for nuclear power reactors. In particular, the NRC conducted (1) a workshop on March 14–16, 2005, to discuss the staff's work in development of a technology-neutral framework in support of a regulatory structure for new plant licensing, and (2) a public meeting on August 25, 2005, to discuss plans for a risk-informed and performance-based revision to 10 CFR Part 50. Meeting minutes were taken and are available to the public (ADAMS Accession Numbers ML050900045 and ML052500385, respectively). At the above workshop and meeting, the NRC discussed the desirability of various approaches for risk-informing the requirements for nuclear power reactors and particularly for new reactors of diverse types. The NRC discussed approaches such as (1) developing an integrated set of risk-informed requirements using a technology-neutral framework as a basis for regulation, and (2) continuing to risk-inform 10 CFR Part 50 on an issue-by-issue basis.

The NRC also plans to continue the ongoing efforts to revise specific regulations in 10 CFR Part 50 as described in SECY–98–300, ''Options for Risk-Informed Revisions to 10 CFR Part 50—Domestic Licensing of Productions and Utilization Facilities'' (ML992870048). The Commission proposes to focus resources in the near-term on completion and subsequent implementation of the ongoing risk-informed rulemaking efforts for current operating reactors and not to initiate new efforts to risk-inform and performance-base other regulations at this time, unless specific regulations or guidance documents are identified that could enhance the efficiency and effectiveness of NRC reviews of near-term applications.

Although the NRC conducted the meetings discussed above to get a sense of stakeholder interest and to ascertain the desired path forward, the NRC is issuing this ANPR to obtain additional comment on the proposed approaches, to ensure that the Commission's intent is known to all stakeholders, and to allow the NRC to proceed to risk-inform the requirements for power reactors in an open, integrated, and transparent manner.

Proposed Plan

The NRC has developed a proposed plan to develop an integrated risk-informed and performance-based alternative to 10 CFR Part 50 that would cover power reactor applications including non-LWR reactor designs. Safety, security, and preparedness will be integrated into this effort to provide one cohesive structure. This structure will ensure that the reactor regulations, and staff processes and programs are built on a unified safety concept and are properly integrated so that they complement one another. Based on the above, the overall objectives of a risk-informed and performance-based alternative to 10 CFR Part 50 are to: (1) Enhance safety and security by focusing NRC and licensee resources in areas commensurate with their importance to public health and safety, (2) provide NRC with a framework that uses risk information in an integrated manner, (3) use risk information to provide flexibility in plant design and operation while maintaining or enhancing safety and security, (4) ensure that risk-informed activities are coherently and properly integrated such that they complement one another and continue to meet the 1995 Commission's PRA Policy Statement, and (5) allow for different reactor technologies in a manner that will promote stability and predictability in the long term.

The approach addresses risk-informed power reactor activities and the associated guidance documents. Risk-informed activities addressing non-power reactors, nuclear materials and waste are not addressed.

The NRC's proposed approach is to create an entire new Part in 10 CFR (referred to as ''10 CFR Part 53'') that can be applied to any reactor technology and that is an alternative to 10 CFR Part 50. Two major tasks are proposed: (1) Develop the technical basis for rulemaking for 10 CFR Part 53, and (2) develop the regulations and associated guidance for 10 CFR Part 53.

Task 1: Development of Technical Basis

The objective of this task is to develop the technical basis for a risk-informed and performance-based 10 CFR Part 53. The technical basis provides the criteria and guidelines for development and implementation of the regulations to be included in Part 53. Current activities associated with developing the technical basis are described in SECY–05–0006 (ADAMS accession number ML043560093).

As the technical basis is being developed, it is anticipated that additional issues will be identified for which stakeholder input is desired. Therefore, it is envisioned that supplemental issues will be added to this ANPR over time.

At the end of the ANPR phase, the Commission will decide whether to proceed to formal rulemaking.

Task 2: Rule Development

The objective of this task is to develop and issue the regulations for 10 CFR Part 53. If upon completion of the technical basis the Commission directs the NRC staff to proceed to rulemaking, the NRC staff will follow its normal rule development process. The NRC staff will develop proposed rule text, interact with stakeholders in an appropriate forum (*e.g.*, posting on web, public workshops), and provide a proposed rule package to the Commission for consideration.

In development of the rulemaking, the necessary guidance documents to meet the regulations in 10 CFR Part 53 will also be developed.

Specific Considerations

Before determining whether to develop a proposed rule, the NRC is seeking comments on this matter from all interested persons. Specific areas on which the Commission is requesting comments are discussed in the following sections. Comments, accompanied by supporting reasons, are particularly requested on the questions contained in each section.

A. Plan

The NRC is seeking comments on the proposed described above:

1. Is the proposed plan to make a risk-informed and performance-based alternative to 10 CFR Part 50 reasonable? Is there a better approach than to create an entire new 10 CFR Part 53 to achieve a risk-informed and performance-based regulatory framework for nuclear power reactors? If yes, please describe the better approach?

2. Are the objectives, as articulated above in the proposed plan section, understandable and achievable? If not, why not? Should there be additional objectives? If so, please describe the additional objectives and explain the reasons for including them.

3. Would the approach described above in the proposed plan section accomplish the objectives? If not, why not and what changes to the approach would allow for accomplishing the objectives?

4. Would existing licensees be interested in using risk-informed and performance-based alternative regulations to 10 CFR Part 50 as their licensing basis? If not, why not? If so, please discuss the main reasons for doing so.

5. Should the alternative regulations be technology-neutral (*i.e.*, applicable to

all reactor technologies, *e.g.*, light water reactor or gas cooled reactor), or be technology-specific? Please discuss the reasons for your answer. If technology-specific, which technologies should receive priority for development of alternative regulations?

6. When would alternative regulations and supporting documents need to be in place to be of most benefit? Is it premature to initiate rulemaking for non-LWR technologies? If so, when should such an effort be undertaken? Could supporting guidance be developed later than the alternative regulations, *e.g.* phased in during plant licensing and construction?

7. The NRC encourages active stakeholder participation through development of proposed supporting documents, standards, and guidance. In such a process, the proposed documents, standards, and guidance would be submitted to and reviewed by NRC staff, and the NRC staff could endorse them, if appropriate. Is there any interest by stakeholders to develop proposed supporting documents, standards, or guidance? If so, please identify your organization and the specific documents, standards, or guidance you are interested in taking the lead to develop?

B. Integration of Safety, Security, and Emergency Preparedness

The Commission believes that safety, security, and emergency preparedness should be integrated in developing a risk-informed and performance-based set of requirements for nuclear power reactors (*i.e.*, in this context, 10 CFR Part 53). The NRC has proposed to establish security performance standards for new reactors (see SECY–05–0120, ADAMS Accession Number ML051100233). Under the proposed approach, nuclear plant designers would analyze and establish, at an earlier stage of design, security design aspects such that there would be a more robust and effective (intrinsic) security posture and less reliance on operational (extrinsic) security programs (guns, guards and gates). This approach takes advantage of making plants more secure by design rather than security components being added on after design.

As part of this approach, the NRC is seeking comment on the following issues:

8. In developing the requirements for this alternative regulatory framework, how should safety, security, and emergency preparedness be integrated? Does the overall approach described in the technology-neutral framework clearly express the appropriate integration of safety, security, and preparedness? If not, how could it better do so?

9. What specific principles, concepts, features or performance standards for security would best achieve an integrated safety and security approach? How should they be expressed? How should they be measured?

10. The NRC is considering rulemaking to require that safety and security be integrated so as to allow an easier and more thorough understanding of the effects that changes in one area would have on the other and to ensure that changes with unacceptable impacts are not implemented. How can the safety-security interface be better integrated in design and operational requirements?

11. Should security requirements be risk-informed? Why or why not? If so, what specific security requirements or analysis types would most benefit from the use of Probabilistic Risk Assessment (PRA) and how?

12. Should emergency preparedness requirements be risk-informed? Why or why not? How should emergency preparedness requirements be modified to be better integrated with safety and security?

C. Level of Safety

The staff, in SECY–05–0130 (ADAMS Accession Number ML051670388), proposed options for establishing a regulatory standard that would be applied during licensing to enhance safety for new plants consistent with the Commission's policy statement for Regulation of Advanced Nuclear Power Plants. Four options were evaluated which included: (1) Perform a case-by-case review, (2) use the Quantitative Health Objectives (QHOs) in the Commission's policy statement on ''Safety Goals for the Operation of Nuclear Power Plants'' (ADAMS Accession Number ML051580401), (3) develop other risk objectives for the acceptable level of safety, and (4) develop new QHOs. The NRC is soliciting stakeholder views on these options.

Subsidiary risk objectives could also be developed to implement the Commission's expectation regarding enhanced safety for new plants. Such subsidiary risk objectives could be a useful way to:

- Focus more on plant design,
- Provide quantitative criteria for accident prevention and mitigation, and
- Provide high level goals to assist in establishing plant system and equipment reliability and availability targets.

Currently, subsidiary risk objectives of 10^{-5}/plant year and 10^{-6}/plant year that could be applicable to all reactor designs are being considered for accident prevention and accident mitigation, respectively, where:

- Accident prevention refers to preventing major fuel damage, and
- Accident mitigation refers to preventing releases of radioactive material offsite such that no early fatalities occur (*i.e.*, from acute radiation doses).

Feedback is sought specifically on the following:

13. Which of the options in SECY–05–0130 with respect to level of safety should be pursued and why? Are there alternative options? If so, please discuss the alternative options and their benefits.

14. Should the staff pursue developing subsidiary risk objectives? Why or why not? Are there other uses of subsidiary risk objectives that are not specified above? If so, what are they?

15. Are the subsidiary risk objectives specified above reasonable surrogates for the QHOs for all reactor designs?

16. Should the latent fatality QHO be met by preventive measures alone without credit for mitigative measures, or is this too restrictive?

17. Are there other subsidiary risk objectives applicable to all reactor designs that should be considered? What are they and what would be their basis?

18. Should a mitigation goal be associated with the early fatality QHO or should it be set without credit for preventive measures (*i.e.*, assuming major fuel damage has occurred)?

19. Should other factors be considered in accident mitigation besides early fatalities, such as latent fatalities, late containment failure, land contamination, and property damage? If so, what should be the acceptance criteria and why?

20. Would a level 3 PRA analysis (*i.e.*, one that includes calculation of offsite health and economic effects) still be needed if subsidiary risk objectives can be developed? For a specific technology, can practical subsidiary risk objectives be developed without the insights provided by level 3 PRAs?

D. Integrated Risk

For new plant licensing, potential applicants have indicated interest in locating new plants at new and existing sites. In addition, potential applicants have indicated interest in locating multiple (or modular) reactor units at new and existing sites. The NRC is evaluating the issue of integrated risk. The staff, in SECY–05–0130, evaluated

three options which included: (1) No consideration of integrated risk, (2) quantification of integrated risk at the site only from new reactors (*i.e.*, the integrated risk would not consider existing reactors), and (3) quantification of integrated site risk for all reactors (new and existing) at that site. Another aspect of this issue is the level of safety associated with the integrated risk. The NRC is presently considering whether the integrated risk should be restricted to the same level that would be applied to a single reactor. If this approach were adopted, for an entity who proposed to add multiple reactors to an existing site, the integrated risk would not be allowed to exceed the level of safety expressed by the QHOs in the Commission's Safety Goal Policy Statement.

The NRC is soliciting stakeholder views on these or other options.

Feedback is sought specifically on the following:

21. Which of the options in SECY–05–0130 with respect to integrated risk should be pursued and why? Are there alternative options? If so, what are they?

22. Should the integrated risk from multiple reactors be considered? Why or why not?

23. If integrated risk should be considered, should the risk meet a minimum threshold specified in the regulations? Why or why not?

E. ACRS Views on Level of Safety and Integrated Risk

In a letter dated September 21, 2005, the Advisory Committee on Reactor Safeguards (ACRS) raised a number of questions related to new plant licensing. The ACRS discussed issues related to requiring enhanced safety and how the risk from multiple reactors at a single site should be accounted for. The details of the ACRS discussion are in the September 21, 2005 letter which is attached to this ANPR. The Commission, in a September 14, 2005 SRM, directed the staff to consider ACRS comments in developing a subsequent notation vote paper addressing these policy issues.

Feedback is sought specifically on the following:

24. Should the views raised in the ACRS letter and by various members of the Committee be factored into the resolution of the issues of level of safety and integrated risk? Why or why not?

F. Containment Functional Performance Standards

The Commission has directed the staff to develop options for containment functional performance requirements and criteria which take into account such features as core, fuel, and cooling system design. In developing these options, the NRC is seeking stakeholder views on the following aspects:

25. How should containment be defined and what are its safety functions? Are the safety functions different for different designs? If so, how?

26. Should the containment functional performance standards be design and technology specific? Why or why not?

27. What approach should be taken to develop technology-neutral containment performance standards that would be applicable to all reactor designs and technologies? Should containment performance be defined in terms of the integrated performance capability of all mechanistic barriers to radiological release or in terms of the performance capability of a means of limiting or controlling radiological releases separate from the fuel and reactor pressure boundary barriers?

28. What plant physical security functions should be associated with containment and what should be the related functional performance standards?

29. How should PRA information and insights be combined with traditional deterministic approaches and defense-in-depth in establishing the proposed containment functional performance requirements and criteria for controlling radiological releases?

30. How should the rare events in the range 10^{-4} to 10^{-7} per year be considered in developing the containment functional performance requirements and criteria? Should events less than 10^{-7} per year in frequency be considered in developing the containment functional performance requirements and criteria?

G. Technology-Neutral Framework

In support of determining the requirements for these alternative regulations, the NRC is developing a technology-neutral framework. This framework provides one approach in the form of criteria and guidelines that could serve as the technical basis for 10 CFR Part 53 that is technology-neutral, risk-informed, and performance-based. A working draft of this framework was issued for public review and comment in SECY–05–0006, dated January 7, 2005 (ML043560093). The latest working draft of the framework document is on the Ruleforum website. An updated version with additional information will be placed on the Ruleforum website in July 2006. The framework provides the criteria and guidelines for the following:

- Safety, security, and emergency preparedness expectations.
- Defense-in-depth and treatment of uncertainties.
- Licensing basis events (LBEs) identification and selection.
- Safety classification of structures, systems, and components.
- PRA technical acceptability.

The NRC is seeking stakeholder views of the following aspects:

31. Is the overall top-down organization of the framework, as illustrated in Figure 2–6 a suitable approach to organize the approach for licensing new reactors? Does it meet the objectives and principles of Chapter 1? Can you describe a better way to organize a new licensing process?

32. Do you agree that the framework should now be applied to a specific reactor design? If not, why not? Which reactor design concept would you recommend?

33. The unified safety concept used in the framework is meant to derive regulations from the Safety Goals and other safety principles (*e.g.*, defense-in-depth). Does this approach result in the proper integration of reactor regulations and staff processes and programs such that regulatory coherence is achieved? If not, why not?

34. The framework is proposing an approach for the technical basis for an alternative risk-informed and performance-based 10 CFR Part 50. The scope of 10 CFR Part 50 includes sources of radioactive material from reactor and spent fuel pool operations. Similarly, the framework is intended to apply to this same scope. Is it clear that the framework is intended to apply to all of these sources? If not, how should the framework be revised to make this intention clear?

The Commission believes that safety, security, and emergency preparedness should be integrated. The approach in the framework to achieve this integration is to define the safety, security, and preparedness expectations that are needed and to define protective strategies and defense-in-depth principles for each area in an integrated manner.

35. What role should the following factors play in integrating emergency preparedness requirements (as contained in 10 CFR 50.47) in the overall framework for future plants:

- The range of accidents that should be considered?
- The extent of defense-in-depth?
- Operating experience?
- Federal, state, and local authority input and acceptance?
- Public acceptance?
- Security-related events?

36. What should the emergency preparedness requirements for future plants be? Should they be technology-specific or generic regardless of the reactor type?

The core of the NRC's safety philosophy has always been the concept of defense-in-depth, and defense-in-depth remains basic to the safety, security, and preparedness expectations of the technology-neutral framework. Defense-in-depth is the mechanism used to compensate for uncertainty. This includes uncertainty in the type and magnitude of challenges to safety, as well as in the measures taken to assure safety.

37. Is the approach used in the framework for how defense-in-depth treats uncertainties well described and reasonable? If not, how should it be improved?

38. Are the defense-in-depth principles discussed in the framework clearly stated? If not, how could they be better stated? Are additional principles needed? If so, what would they be? Are one or more of the stated principles unnecessary? If so, which principles are unnecessary and why are they unnecessary?

39. The framework emphasizes that sufficient margins are an essential part of defense-in-depth measures. The framework also provides some quantitative margin guidance with respect to LBEs in Chapter 6. Should the framework provide more quantitative guidance on margins in general in a technology-neutral way? What would be the nature of this guidance?

40. The framework stresses that all of the Protective Strategies must be included in the design of a new reactor but it does not discuss the relative emphasis placed on each strategy compared to the others. Are there any conditions under which any of these protective strategies would not be necessary? Should the framework contain guidelines as to the relative importance of each strategy to the whole defense-in-depth application?

41. Are the protective strategies well enough defined in terms of the challenges they defend against? If not, why not? Are there challenges not protected by these five protective strategies? If so, what would they be?

In the framework, risk information is used in two basic parts of the licensing process: (1) Identification and selection of those events that are used in the design to establish the licensing basis, and (2) the safety classification of selected systems, structures, and components.

42. Is the approach to and the basis for the selection LBEs reasonable? If not, why not? Is the cut-off for the rare event frequency at 1E–7 per year acceptable? If not, why not? Should the cut-off be extended to a lower frequency?

43. Is the approach used to select and to safety classify structures, systems, and components reasonable? If not, what would be a better approach?

44. Is the approach and basis to the construction of the proposed frequency-consequence (F–C) curve reasonable? If not, why not?

45. Are the deterministic criteria proposed for the LBEs in the various frequency categories reasonable from the standpoint of assuring an adequate safety margin? In particular, are the deterministic dose criteria for the LBEs in the infrequent and rare categories reasonable? If not, why not?

46. Is it reasonable to use a 95% confidence value for the mechanistic source term for both the PRA sequences and the sequences designated as LBEs to provide margin for uncertainty? If not, why not? Is it reasonable to use a conservative approach for dispersion to calculate doses? If not, why not?

The approach proposed in the framework requires a full-scope ''living'' PRA that would incorporate operating experience and performance-based requirements in the periodic re-examination of events designated as LBEs that were originally selected based on the design, and structures, systems, and components that were characterized as safety-significant.

47. The approach proposed in the framework does not predefine a set of LBEs to be addressed in the design. The LBEs are plant specific and identified and selected from the risk-significant events based on the plant-specific PRA. Because the plant design and operation may change over time, the risk-significant events may change over time. The licensee would be required to periodically reassess the risk of the plant and, as a result, the LBEs may change. This reassessment could be performed under a process similar to the process under 10 CFR 50.59. Is this approach reasonable? If not, why not?

48. The framework provides guidance for a technically acceptable full-scope PRA. Is the scope and level of detail reasonable? If not, why not? Should it be expanded and if so, in what way?

49. Because a PRA (including the supporting analyses) will be used in the licensing process, should it be subject to a 10 CFR Part 50 Appendix B approach to quality assurance? If not, why not?

Chapter 8 describes and applies a process to identify the topics which the requirements must address to ensure the success of the protective strategies and administrative controls. This process is based upon:

- Developing and applying a logic diagram for each protective strategy to identify the pathways that can lead to failure of the strategy and then, through a series of questions, identify what needs to be done to prevent the failure;
- Applying the defense-in-depth principles from Chapter 4 to each protective strategy;
- Developing and applying a logic diagram to identify the needed administrative controls; and
- Providing guidance on how to write the requirements.

50. Is this process clear, understandable, and adequate? If not, why not? What should be done differently?

51. Is the use of logic diagrams to identify the topics that need to be addressed in the requirements reasonable? If not, what should be used?

52. Is the list of topics identified for the requirements adequate? Is the list complete? If not, what should be changed (added, deleted, modified) and why?

53. A completeness check was made on the topics for which requirements need to be developed for the new 10 CFR Part 53 (identified in Chapter 8) by comparing them to 10 CFR Part 50, NEI 02–02, and the International Atomic Energy Agency (IAEA) safety standards for design and operation. Are there other completeness checks that should be made? If so, what should they be?

54. The results of the completeness check comparison are provided in Appendix G. The comparison identified a number of areas that are not addressed by the topics but that are covered in the IAEA standards. Should these areas be included in the framework? If so, why should they be included? If not, why not?

H. Defense-in-Depth

In SECY–03–0047 (ML030160002), the staff recommended that the Commission approve the development of a policy statement or description (*e.g.*, white paper) on defense-in-depth for nuclear power plants to describe: The objectives of defense-in-depth (philosophy); the scope of defense-in-depth (design, operation, etc.); and the elements of defense-in-depth (high level principles and guidelines). The policy statement or description would be technology-neutral and risk-informed and would be useful in providing consistency in other regulatory programs (*e.g.*, Regulatory Analysis Guidelines). In the SRM on SECY–03–0047, the Commission directed the staff to consider whether it can accomplish

the same goals in a more efficient and effective manner by updating the Commission Policy Statement on Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities to include a more explicit discussion of defense-in-depth, risk-informed regulation, and performance-based regulation. The NRC is interested in stakeholder comment on a policy statement on defense-in-depth.

55. Would development of a better description of defense-in-depth be of any benefit to current operating plants, near-term designs, or future designs? Why or why not? If so, please discuss any specific benefits.

56. If the NRC undertakes developing a better description of defense-in-depth, would it be more effective and efficient to incorporate it into the Commission's Policy Statement on PRA or should it be provided in a separate policy statement? Why?

57. RG 1.174 assumes that adequate defense-in-depth exists and provides guidance for ensuring it is not significantly degraded by a change to the licensing basis. Should RG 1.174 be revised to include a better description of defense-in-depth? Why or why not? If so, would a change to RG 1.174 be sufficient instead of a policy statement? Why or why not?

58. How should defense-in-depth be addressed for new plants?

59. Should development of a better description of defense-in-depth (whether as a new policy statement, a revision to the PRA policy statement, or as an update to RG 1.174) be completed on the same schedule as 10 CFR Part 53? Why or why not?

I. Single Failure Criterion

In SECY–05–0138 (ML051950619), the staff forwarded to the Commission a draft report entitled ''Technical Report to Support Evaluation of a Broader Change to the Single Failure Criterion'' and recommended to the Commission that any followup activities to risk-inform the Single Failure Criterion (SFC) should be included in the activities to risk-inform the requirements of 10 CFR Part 50. The Commission directed the staff to seek additional stakeholder involvement. The report provides the following options: (1) Maintain the SFC as is, (2) risk-inform the SFC for design bases analyses, (3) risk-inform SFC based on safety significance, and (4) replace SFC with risk and safety function reliability guidelines. The NRC is soliciting stakeholder feedback with regard to the proposed alternatives.

60. Are the proposed options reasonable? If not, why not?

61. Are there other options for risk-informing the SFC? If so, please discuss these options.

62. Which option, if any, should be considered?

63. Should changes to the SFC in 10 CFR Part 50 be pursued separate from or as a part of the effort to create a new 10 CFR Part 53? Why or why not?

J. Continue Individual Rulemakings to Risk-Inform 10 CFR Part 50

The NRC has for some time been revising certain provisions of 10 CFR Part 50 to make them more risk-informed and performance-based. Examples are: (1) A revision to 10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants;'' (2) a revision of 10 CFR 50.48 to allow licensees to voluntarily adopt National Fire Protection Association (NFPA) Standard 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition,'' (NFPA 805); and (3) issuance of 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors,'' as a voluntary alternative set of requirements. These actions have been effective but required extensive NRC and industry efforts to develop and implement.

The NRC plans to continue the current risk-informed rulemaking actions, *e.g.*, 10 CFR 50.61 on pressurized thermal shock and 10 CFR 50.46 on redefinition of the emergency core cooling system break size, that are ongoing, and would undertake new risk-informed rulemaking only on an as-needed basis.

The NRC is seeking comment on the following issues:

64. Should the NRC continue with the ongoing current rulemaking efforts and not undertake any effort to risk-inform other regulations in 10 CFR Part 50, or should the NRC undertake new risk-informed rulemaking on a case-by-case priority basis? Why?

65. If the NRC were to undertake new risk-informed rulemakings, which regulations would be the most beneficial to revise? What would be the anticipated safety benefits?

66. In addition to revising specific regulations, are there any particular regulations that do not need to be revised, but whose associated regulatory guidance documents, could be revised to be more risk-informed and performance-based? What are the safety benefits associated with revising these guides? Which ones in particular are stakeholders interested in having revised and why?

67. If additional regulations and/or associated regulatory guidance documents were to be revised, when should the NRC initiate these efforts, *e.g.*, immediately or after having started implementation of current risk-informed 10 CFR Part 50 regulations?

At the end of the ANPR phase, the NRC will assess whether to adjust its approach to risk-inform the requirements for nuclear power reactors including existing and new plants.

List of Subjects in 10 CFR Part 50

Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

The authority citation for this document is 42 U.S.C. 2201.

Dated at Rockville, Maryland, this 28th day of April, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment—Letter From G. B. Wallis, Chairman ACRS, dated September 21, 2005, ''Report on Two Policy Issues Related to New Plant Licensing,'' ADAMS Accession Number ML052640580

[ACRSR–2149]
September 21, 2005.

The Honorable Nils J. Diaz, *Chairman, U.S. Nuclear Regulatory Commission, Washington, DC.*

Subject: Report on Two Policy Issues Related to New Plant Licensing

Dear Chairman Diaz: During the 523rd meeting of the Advisory Committee on Reactor Safeguards, June 1–3, 2005, we met with the NRC staff and discussed two policy issues related to new plant licensing. We also discussed this matter during our 524th, July 6–8, 2005, and 525th, September 8–10, 2005 meetings. We had the benefit of the documents referenced.

These policy issues were:

- What shall be the minimum level of safety that new plants need to meet to achieve enhanced safety?
- How shall the risk from multiple reactors at a single site be accounted for?

In SECY–05–0130, the staff recommends that the expectation for enhanced safety be met by requiring that new plants meet the Quantitative Health Objectives (QHOs), *i.e.*, by applying the QHOs to individual plants. The staff maintains that this would represent an enhancement in safety over current plants, which are now required to meet adequate protection, but may not meet the QHOs. The staff argues that this position is consistent with the Commission's Policy Statement on Regulation of Advanced Nuclear Power Plants.

The staff proposes to address the risk of multiple reactors at a single site by requiring that the integrated risk associated with only new reactors (*i.e.*, modular or multiple reactors) at a site not exceed the risk expressed by the QHOs. The risk from existing plants, which may already exceed the QHOs, is not considered.

We discussed these issues and concluded that use of the existing QHOs is not sufficient to resolve either of these issues. In considering the overall scope of the issues raised by the staff, we found it more apt and effective to reframe the two issues into the following questions:

1. What are the appropriate measures of safety to use in the consideration of the certification of a new reactor design?
2. Should quantitative criteria for these measures be imposed to define the minimum level of safety?
3. How should these measures be applied to modular designs?
4. How should risk from multiple reactors at a site be combined for evaluation by suitable criteria?
5. How should the combination of new and old reactors at a site be evaluated by these criteria?
6. What should these criteria be?
7. How should compliance with these criteria be demonstrated?

Discussion

Question 1. What are the appropriate measures of safety to use in the consideration of the certification of a new reactor design?

The QHOs are criteria for the risk at a site and thus involve not only the design and operation of the reactor(s), but also the site characteristics, the number and power level of plants on the site, meteorological conditions, population distribution, and emergency planning measures. By themselves, the QHOs do not express the defense-in-depth philosophy that the Commission seeks to limit not only the risk from accidents, but also the frequency of accidents.

Although core damage frequency (CDF) and large, early release frequency (LERF) have been viewed by the NRC as light water reactor (LWR)-specific surrogates for the QHOs, they have come to be accepted as metrics to gauge the acceptable level of safety of certified designs and the acceptability of proposed changes in the licensing basis. They are measures of reactor design safety that incorporate a defense-in-depth balance between prevention and mitigation. Currently used values of these metrics have been derived from the QHOs. If they were no longer to be viewed as surrogates, acceptance values for these metrics could be independently specified and need not be derived from the QHOs. Thus, they would be fundamental characteristics of reactor design independent of siting and emergency planning requirements.

If these measures are no longer viewed as surrogates for the QHOs, the appropriate measure of a large release need not be restricted to ''early'' but could be a ''large release frequency'' (LRF) which would apply to the summation of all large release frequencies regardless of the time of occurrence. The LRF would thus have broader applicability to designs in which the release is likely to occur over an extended period.

A majority of the Committee members favors the use of CDF and LRF as fundamental measures of the enhanced safety of new reactor designs and not simply as surrogates for the QHOs.

In SECY–05–0130, the staff argues that it will be difficult to derive such measures for different technologies, although the staff proposes to include them as subsidiary goals in their technology-neutral framework document. Although the processes and mechanisms for failure and release will differ greatly for different reactor technologies, technology-neutral definitions in terms of a release from the fuel (the accident prevention/CDF goal) and from the containment/confinement (the large release goal) seem feasible to us. For example, the CDF of a Pebble Bed Modular Reactor (PBMR), would be an indicator of the success criteria for the design measures intended to prevent release from the fuel of that module. It could be defined in terms of the frequency of exceeding a fuel temperature of 1600 °C.

Question 2. Should quantitative criteria for these measures be imposed to define the minimum level of safety?

In the current Policy Statement on the Regulation of Advanced Nuclear Power Plants, the Commission decided not to set numerical criteria for enhanced safety but rather focused on aspects which might make designs more robust. In addition, the Safety Goal Policy Statement was intended to provide a definition of ''how safe is safe enough.'' If a plant would meet the QHOs at a proposed site, then the additional risk it imposes is already very low compared to other risk in society. It now seems possible to build economically competitive reactors with risks at most sites that would be much lower than implied by the QHOs. The Electric Power Research Institute (EPRI) and European Utility Requirements Documents specify CDF and LERF values that would provide large margins to the QHOs for virtually all sites. An explicit commitment to lower values of CDF and LRF would be responsive to the Commission's desire for enhanced safety and may have significant impact on public perceptions and confidence.

We considered the following alternatives, identifying arguments in favor of each. Since such a decision has broad practical implementation and policy implications, we recommend that the staff further explore the consequences of these (and possibly other) choices as a basis for an eventual Commission decision.

a. Set maximum values for CDF and LRF at 10^{-5}/yr and 10^{-6}/yr for new reactor designs. This would make more explicit the Commission's stated expectation that future reactors provide enhanced safety. This could also provide a basis for establishing multinational design approval (as these would now be independent of U.S. QHOs). The suggested values are consistent with those in the EPRI and the European Utility Requirements Documents, the EPR Safety Document, and those used in the certification of advanced reactors (the ABWR, AP600 and CE-System 80+). These values are also consistent with the generic values for an accident prevention frequency and a LRF in the staff's draft technology-neutral framework document.

b. Leave the values unspecified. CDF and LRF would be considered along with other aspects of the design, such as defense-in-depth and passive safety features, in reaching a decision about design certification. This would give the staff more flexibility to respond to technology-specific features.

On a preliminary basis, the majority of the Committee members favor Alternative (a), but is not ready to make a recommendation until more is understood about the likely consequences and policy implications of the decision.

Question 3. How should these measures be applied to modular designs?

The staff's considerations of integrated risk do not distinguish between criteria for modular reactor designs and criteria for the risk due to multiple plants on a site. Thus, the staff treats CDF and LRF (or LERF) for modular designs and/or multiple plants on a site as still being QHO risk surrogates. In our view, the CDF and LRF metrics are design criteria that are to be ''imposed'' at the plant design certification stage independent of any site considerations.

New reactors could include PBMR, AP600, AP1000, Economic and Simplified Boiling Water Reactor (ESBWR), and EPR, and the number of new reactors at a site could vary by an order of magnitude.

Some Committee members believe that to get consistency in expectations of enhanced safety in all cases, the integrated risk from all new reactors on a site is the appropriate measure. This is true both for the risk metric LRF and the defense-in-depth accident prevention metric CDF. Thus, for the PBMR, which is proposed in terms of an eight-module package, the CDF and LRF goals (*e.g.*, 10^{-5}/ry and 10^{-6}/ry) would be applied to the package. In effect each module would have to have a somewhat lower CDF and LRF. Because of the potential for interactions, analysis of individual modules may not be meaningful and the analysis should focus on the ''eight pack.''

Other Committee members prefer CDF and LRF design specifications that are independent of the number of modules. These members believe the specified acceptable CDF for enhanced safety (*e.g.* 10^{-5}/yr) should be applied to each module at the design stage and would be an indicator of the success criteria for the design measures provided for each module intended to prevent release from the fuel of that module. Similarly, LRF would be on a modular basis. As it may be possible to restrict the total power of a given module to a level that the quantity of fission products releasable cannot exceed the acceptance LRF value (*e.g.* 10^{-6}/yr), a modular design implicitly represents a kind of defense-in-depth (given appropriate consideration of common-mode failures and module interactions).

Question 4. How should risk from multiple reactors at a site be combined for evaluation by suitable criteria?

The QHOs address the risk to individuals that live in the vicinity of a site. Logically, the risk to these individuals should be determined by integrating the risk from all the units at the site. The manner by which the risks of different units at a site are to be integrated must address the treatment of modular designs, units with differing power levels, and accidents involving multiple units.

Question 5. How should the combination of new and old reactors at a site be evaluated by these criteria?

Any new plant that meets the independent safety criteria discussed in Questions 1 through 3 would be expected to add substantially less risk to an existing site than that already provided by existing plants on the site. If a proposed site already exceeds the QHOs, it should not be approved for new plants. For existing sites not being proposed for the addition of new plants, there would be no need to assess their risk status because they provide adequate protection. These sites would, thus, be grandfathered in the new framework.

Question 6. What should these criteria be?

Use of the QHOs for evaluating the site suitability for new reactors is attractive because the QHOs represent a fundamental statement about risk independent of any particular technology. The current QHOs (prompt and latent fatalities), however, only address individual risk and do not directly address societal risks such as total deaths, injuries, non-fatal cancers, and land contamination. These societal impacts are addressed somewhat in the current regulations by the siting criteria on population.

Some ACRS members believe that measures of societal risk need to be an explicit part of any new technology-neutral framework. The staff argues in the technology-neutral framework document that the limits proposed there for CDF and LRF limit societal risks such as land contamination and dose to the total population. However, these members recognize that CDF and LRF are not equivalent to risk and disagree with the staff's position.

Other ACRS members believe that the current siting criteria have served to limit societal risks. In addition, societal risks are considered in the environmental impact assessments of license renewal. The estimates presented in NUREG–1437 Vol. 1 indicate that the risk of early and latent fatalities from current nuclear power plants is small. The predicted early and latent fatalities from all plants (that is, the risk to the population of the United States from all nuclear power plants) is approximately one additional early fatality per year and approximately 90 additional latent fatalities per year, which is a small fraction of the approximately 100,000 accidental and 500,000 cancer fatalities per year from other sources. The evaluation of Severe Accident Mitigation Alternatives (SAMAs) as part of the license renewal process also considers societal risk measures and monetizes them to perform cost benefit studies. Based on current NRC regulatory analysis guidance, very few of these SAMAs appear cost beneficial.

Environmental impact statements (EISs) also assess the societal costs of probabilistic accidents at the current sites. The results, although very approximate, indicate that the societal costs at many current reactor sites would likely exceed a reasonable societal cost risk acceptance criterion. For example, these would exceed the cost associated with 0.1% of the above noted 100,000 early fatalities due to all accidents.

Thus, the inclusion of a quantitative societal risk acceptance measure appears important and could add to greater public confidence and understanding of the risks of nuclear power. It may be worthwhile for the staff to consider supplementing the current QHOs with additional risk acceptance measures that relate directly to societal risks.

Question 7. How should compliance with these criteria be demonstrated?

The establishment of goals or criteria of various kinds cannot be divorced from the ability to demonstrate compliance. Considerable improvement in PRA practice will be needed to provide confidence that the goals on CDF and LRF for future plants will be met in a meaningful way. Operating experience has been crucial for the analysts to appreciate the significance of potential errors/faults. For example, before TMI, it was assumed that operators would not have problems diagnosing what is going on under certain conditions.

Some of the challenges that new plants will create for PRA analysts are:

i. Operating experience on component failure rate distributions and frequencies developed for light-water reactors has limited applicability to other reactor types.

ii. Some designs are considering components, *e.g.*, microturbines and fuel cells, for which reliability data are nearly non-existent.

iii. Digital Instrumentation and Control systems are expected to be an integral part of future reactor designs. The risk consequences of such practice are difficult to quantify at this time.

Thus, in addition to the imposition of design goals for low CDF and LRF, it will be important to maintain sufficient defense-in-depth in the technology-neutral framework.

We look forward to additional discussion with the staff on these issues.

Sincerely,

Graham B. Wallis, *Chairman*.

Additional Comments From ACRS Members Dana A. Powers and John D. Sieber

We disagree with our colleagues on the matter of this letter. The Commission has indicated a laudable expectation that future reactors will be safer than current reactors. The question that our colleagues should have addressed first is whether a quantitative metric is needed to substantiate this expectation. It is by no means obvious that such a metric is essential. We can well imagine future plants designed in conjunction with far more comprehensive probabilistic safety analyses that realistically address all known accident hazards during all modes of operation to a depth far greater than is attempted now for elements of the fleet of operating reactors. Our experience has been that whenever improvements are made in quantitative risk analysis methods, unforeseen, hazardous, plant configurations, systems interactions and operations become apparent. Hidden, these configurations, interactions and operations may arise unexpectedly with undesirable consequences. Revealed, they can be avoided often with modest efforts. This is exploitation of the full potential of quantitative risk analysis to achieve greater safety in nuclear power plants. It contrasts with the more effete pursuit of the ''bottomline'' results of PRA to compare with arbitrarily proliferated safety metrics.

Our objective should be to foster the voluntary development of quantitative risk analysis methods both in scope and depth in order to improve the safety of nuclear power plants. Fostering voluntary development of methods by nuclear community is especially important now when methods developments have stagnated at NRC relative to the situation a decade ago.

Our colleagues seem to presume it essential that future reactors meet the Quantitative Health Objectives (QHOs). These QHOs define a very stringent safety level that has always been viewed as an ''aiming point'' or a benchmark and not as some minimum standard that cannot be exceeded. Indeed, the definition of the QHOs was undertaken to define ''how safe is safe enough'' so that no additional regulatory requirements for greater safety would be needed. Requiring such a stringent standard as the QHOs as a minimum level of safety for advanced reactors appears to go well beyond the authority granted by the Atomic Energy Act that requires adequate protection of the public health and safety. We are unaware that the Commission has made such a demand for advanced reactors. Were the Commission to make such a demand, we would question the wisdom of doing so. By demanding such a stringent level of safety, our colleagues appear to be willing to forego great strides in safety that can be achieved with advanced plants if these plants fail to live up to what can only be viewed as an extreme safety standard.

The demands our colleagues appear to make on the safety of advanced reactors lack a critical dimension of practicality since we do not believe the technology now exists to do the calculations needed to compare a plant's safety profile to the QHOs. By the very definitions of the QHOs, such calculations would entail analyses of modes of operation only very crudely addressed today by most (fire risk, shutdown risk and natural phenomena risk) and the conduct of uncertainty analyses dealing with both parameters and models that to our knowledge have been done by no one.

Because of the limitations of risk assessment technology available today for the evaluation of the current fleet of nuclear power plants, surrogate metrics such as core damage frequency (CDF) and large early

release frequency (LERF) have been introduced and widely used. Our colleagues seem to believe that there are known critical values of these surrogate metrics that mark the point at which a plant meets the QHOs. We know of no defensible analysis that establishes such critical values of these surrogate metrics. We are, of course, quite aware of very limited analyses considering only risk during normal operations that purport to show existing reactors meet the QHOs. Such limited analyses are simply not pertinent. They do not meet the exacting standards required by the definitions of the QHOs. Should defensible analyses ever be done, we are sure that they will show the critical values of the surrogate metrics are technology dependent. Indeed, more defensible analyses will show in all likelihood that better surrogate measures can be defined for advanced reactor technologies.

Our colleagues are sufficiently enamored with the existing surrogate metrics that they recommend these surrogates be enshrined on a level equivalent to QHOs. More remarkable, our colleagues want to establish critical values of the metrics that are a factor of ten less than the values they assert mark a plant meeting the rather stringent level of safety defined by the QHOs. They do this, apparently, for no other reason than the fact that clever engineers can design plants meeting these smaller values at least for a limited number of operational states. While we are willing to congratulate the engineers on their designs, we can see no reason why such stringent safety requirements should be made regulatory requirements to be imposed on the designers' efforts. Again, we worry that doing so may create unnecessary burdens that cause our society to sacrifice for practical reasons great improvements in power reactor safety simply because these improvements fall short of our colleagues unreasonably high safety expectations.

Though surrogate metrics have been useful, it is important to remember that they are only expedients. The full promise of risk-informed safety assessment will not be realized until it is possible to do routinely risk assessments of sufficient scope and depth so it is possible to dispense with surrogate metrics. Enshrining these surrogates along with the QHOs will only delay efforts to reach this preferred status.

The potential of our colleagues recommendations have to stifle new technology and forego improved safety reaches a crisis when they speak to the location of modern, safer plants on sites with older but still adequately safe plants. Our colleagues have no tolerance for a single older plant if a newer, safer plant is to be collocated on the site. They are willing to tolerate any number of similarly old plants on a site if a new, safer plant is not added to this site. We find this remarkable. Our colleagues' recommendations give no credit for experience with a site. They fail to recognize the finite life of older plants even when licenses have been renewed. We fear that our colleagues have failed to assess the integral safety consequences of their stringent demands on this matter. A very great concern is that our colleagues pursuit of ideals in risk avoidance may well arrest the current, healthy quest for improved safety among those exploring advanced reactor designs.

References

1. U.S. Nuclear Regulatory Commission, SECY–05–130,'' Policy Issues Related to New Plant Licensing and Status of the Technology Neutral Framework for New Plant Licensing,'' dated July 21, 2005.

2. U.S. Nuclear Regulatory Commission, ''Safety Goals for the Operations of Nuclear Power Plants, Policy Statement,'' **Federal Register,** Vol. 51, (51 FR 30028), August 4, 1986.

3. U.S. Nuclear Regulatory Commission, ''Commission's Policy Statement on the Regulation of Advanced Nuclear Power Plants,'' 59 FR 35461, July 12, 1994.

4. U.S. Nuclear Regulatory Commission, NUREG–1437, Volume 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' May 1996.

[FR Doc. E6–6745 Filed 5–3–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–03–630]

RIN 1904–AB52

Energy Conservation Program for Consumer Products: Classifying Products as Covered Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: Under the Energy Policy and Conservation Act (EPCA or the Act), the Department of Energy (DOE or the Department) is proposing to define the term ''household'' and related terms. These definitions would provide a basis for the Department to determine whether the household energy use of products not currently covered by EPCA meets the levels required for DOE to classify a product as a ''covered product'' under the Act; such a classification would mean that DOE potentially could establish energy conservation requirements for the covered product. Once the ''household'' definition is in place, the Secretary may exercise statutory authority to (1) classify as covered products additional qualifying consumer products beyond the products already specified in EPCA, and then (2) set test procedures and efficiency standards for them.

DATES: The Department will accept written comments, data and information regarding the proposed rule no later than June 19, 2006. The Department has determined that a public meeting is unnecessary under 42 U.S.C. 7191(c)(1), since no substantial issue of fact or law exists and this rulemaking is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

ADDRESSES: Submit written comments, identified by docket number EE–RM–03–630 and/or RIN 1904–AB52, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *coverageconsumerproducts@ee.doe.gov.* Include EE–RM–03–630 and/or RIN 1904–AB52 in the subject line of the message.
- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, NOPR to Define ''Household'', EE–RM–03–630, and/or RIN 1904–AB52, 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, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document (Public Participation).

Docket: For access to the docket to read background documents or comments received, 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) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Linda Graves, Esq., Project Manager, Coverage of Consumer Products, Docket No. EE–RM–03–630, EE–2J/Forrestal Building, U.S. Department of Energy, Office of Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851, E-mail: *linda.graves@ee.doe.gov,* or Francine Pinto, Esq., or Thomas

DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507, E-mail: *Francine.Pinto@hq.doe.gov* or *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Authority
B. Background
C. Summary of Proposed Rule
II. Discussion
A. The Proposed Definitions
B. Extent of Reliance on Definitions Used in the Department's Residential Energy Consumption Survey
C. Conclusion
III. Procedural Requirements
A. Review Under Executive Order 12866, ''Regulatory Planning and Review''
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132, ''Federalism''
F. Review Under Executive Order 12988, ''Civil Justice Reform''
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use''
IV. Public Participation
A. Determination Not to Hold Public Meeting
B. Submission of Written Comments
V. Approval by the Office of the Secretary

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act sets forth a variety of provisions that provide for the ''Energy Conservation Program for Consumer Products Other than Automobiles.'' (42 U.S.C. 6291–6309) The program consists essentially of four parts: Mandatory testing, labeling, and energy conservation standards, as well as certification and enforcement procedures. DOE implements all parts of the program except for the labeling provisions, which are implemented by the Federal Trade Commission (FTC).

The Act lists specific types of consumer products that are subject to this program, referring to them as ''covered products,'' and authorizes the Department to add other consumer products to the program as covered products. (42 U.S.C. 6292(a) and (b)) The Department may add any type of consumer product if: (1) ''classifying products of such type as covered products is necessary or appropriate to carry out the purposes'' of EPCA, and (2) the annual per household energy use of such products in the households that use them is likely to average more than 100 kilowatt-hours. (42 U.S.C. 6292(b)) For purposes of section 6292(b), ''[t]he term 'household' shall be defined under rules of the Secretary [of Energy].'' (42 U.S.C. 6292(b)(2)(C)) This notice proposes a rule that would amend 10 CFR 430.2 to define ''household'' as well as four related terms, three of which are used in defining ''household.''

The Department may prescribe test procedures for any product it classifies as a ''covered product.'' (42 U.S.C. 6293(b)(1)(B)) If the Department prescribes such test procedures, the FTC may also prescribe a labeling rule under EPCA for the product if it determines that labeling will assist purchasers in making purchasing decisions and is economically and technically feasible. (42 U.S.C. 6294(a)(3)) Finally, the Department may prescribe energy conservation standards for a type of consumer product it classifies as covered if the product meets certain additional criteria, such as ''average per household energy use within the United States'' in excess of 150 kilowatt-hours, and ''aggregate household energy use'' in excess of 4.2 billion kilowatt-hours, for any prior 12-month period. (42 U.S.C. 6295(l)(1))

Once the household definition is finalized through this rulemaking, the Secretary may exercise statutory authority (1) to identify as covered products additional qualifying consumer products beyond the products already specified in EPCA, and then potentially (2) to set test procedures and efficiency standards for the newly covered consumer products.

B. Background

Prior to 2006, the Department annually prepared an analysis of pending and prospective rulemakings under its energy conservation program for consumer products and its companion program for commercial and industrial equipment under parts B and C of Title III of EPCA. DOE used this analysis to develop priorities and propose schedules for all rulemakings under these programs. In its priority-setting activities beginning in fiscal year 2003, the Department discussed possible expansion of the programs to include additional consumer products and commercial and industrial equipment. However, with the passage of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, several additional products that the Department had been considering for coverage (e.g., ceiling fans and torchieres) became covered products with prescribed standards.

Since the passage of EPACT 2005, the Department has re-assessed its rulemaking procedures and scheduling decisions. The Department held a public meeting November 15, 2005, followed by a 30-day public comment period, to obtain public input. After considering the public comments, the Department released a five-year plan that describes how DOE will address the appliance standards rulemaking backlog and meet all of the statutory requirements established in EPCA, as amended, and EPACT 2005. The plan is contained in the Report to Congress, which was released January 31, 2006, and is posted on the DOE Web page at: *http://www.eere.energy.gov/buildings/appliance_standards/2006_schedule_setting.html.* The report focuses on how the Department will complete rulemakings currently in process, catch up on a very large backlog of overdue rulemakings, and meet all new rulemaking requirements contained in EPACT 2005 on time. Those tasks are such a major undertaking that the Department does not contemplate expanding the program to cover additional consumer products or commercial equipment at this time. Nonetheless, the Department is proceeding with this rulemaking because it has invested substantial work effort that is now close to the point of completion. This rulemaking also fills in a gap in DOE regulations that must be filled before the Secretary may exercise statutory authority in the future as scheduling, priorities, and available resources permit to expand standards coverage to appropriate products. Particularly, as energy efficient technologies advance in the future, the results of this rulemaking may be used to implement the Department's authority to consider whether any other products should be classified as covered products.

As indicated above, a significant element of such assessment for each of these products is whether its annual ''per-household'' energy use is likely to exceed 100 kilowatt-hours. The Department can classify a product as covered only if it determines that the product meets this criterion. To address the criterion, the Department must define the term ''household,'' and is

proposing such a definition in this notice. DOE would apply the definition to any future evaluations of whether the Department can classify other consumer products as covered products. In addition, the Department would use the definition as a basis for determining whether a product meets the per-household and aggregate-household energy-use criteria for setting energy conservation standards for a product DOE classifies as covered. (42 U.S.C. 6295(l))

C. Summary of Proposed Rule

The proposed rule defines ''household'' and three related terms. Taken together, these definitions in essence provide that a household is an individual or group that lives together in a housing unit that they occupy separately from any other group or individual. The content of these definitions is consistent with the legislative history of EPCA and with dictionary definitions of ''household,'' and is essentially the same as the relevant definitions that the DOE Energy Information Administration (EIA) uses as a basis for its periodic Residential Energy Consumption Surveys (RECS) of household energy use, which is discussed in more detail below in section II., C. The proposed rule also defines the term ''energy use of a type of consumer product which is used by households,'' which is virtually identical to a term used in section 322(b)(2)(A) of EPCA, 42 U.S.C. 6292(b)(2)(A), so as to make clear the locations at which household energy consumption can occur and that visitors to a household can contribute to such consumption.

II. Discussion

A. The Proposed Definitions

As discussed above, DOE is authorized to add products to its program under EPCA, if the product is likely to exceed ''annual per-household energy use'' of 100 kilowatt-hours pursuant to the Department's definition of ''household.'' (42 U.S.C. 6292(a) and (b))

The Department is proposing a definition of ''household,'' and of the related terms ''housing unit,'' ''separate living quarters,'' and ''group quarters.'' The definitions of these related terms serve to clarify the meaning of ''household.'' ''Housing unit'' is defined because the term is used in the definition of ''household,'' and ''separate living quarters'' and ''group quarters'' are defined because they are used in the definition of ''housing unit.''

The core of the proposed rule is the definition of ''household'' as an individual or group that resides in a particular housing unit. This conforms to the general dictionary definition of the term. The proposed rule, in turn, defines ''housing unit'' as ''a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but [that] does not include group quarters.'' ''Separate living quarters'' is defined as a place where people live in a separate space from others and to which they have access without going through the living space of others, and ''group quarters'' is defined as living quarters occupied by an institutional group of 10 or more unrelated persons. The Department has incorporated the substance of the RECS definitions of these last two terms to assure that ''household'' refers to a group that consumes energy as a unit. See 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/glossary.html.* The cut off of 10 or more unrelated people would serve to distinguish a group that acts as a unit from one that does not.

Under these proposed definitions, the Department intends to use a broad range of data, including data generated by the RECS, in determining whether products qualify for coverage and the development of standards under EPCA. In gathering information as to the household energy use of any particular product, DOE will use the best available data for that product. When RECS data covers a product, its use will be possible because the substance of the proposed definitions is consistent with and quite similar to the corresponding EIA definitions. See 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/glossary/html.* Moreover, DOE will generally prefer to use the RECS data because generally it is the most comprehensive and best available source of information on residential energy consumption. The RECS, however, will likely not cover many of the products the Department is investigating. By not adhering to all of the details of the definitions used in the RECS, today's proposed definitions would allow the Department sufficient flexibility to use other sources of information as well.

Finally, EPCA defines ''average annual per-household energy use'' for a type of product as being the ''estimated aggregate annual energy use * * * of consumer products of such type which are used by households in the United States, divided by the number of such households which use [them].'' (42 U.S.C. 6292(b)(2)) The Department is proposing to define ''energy use of a type of consumer product which is used by households'' as meaning energy use by the product both within the interior space of housing units occupied by households, as well as on contiguous property used primarily by the household occupying the housing unit. Thus, for example, where a product consumes energy in a housing unit's back yard or outdoor pool or accessory building(s) or structures, such energy use would be included in determining per-household or aggregate-household energy use. This definition also makes clear that household energy use includes all energy consumption, both by members of each household and their visitors, at all housing units occupied by each household.

B. Extent of Reliance on Definitions Used in the Department's Residential Energy Consumption Survey

Since 1978, the EIA has periodically gathered information about energy consumption in the residential sector by conducting a RECS, and in 2004, EIA posted data on its Web site on the results of its 2001 RECS at *http://www.eia.doe.gov/emeu/recs/* (2001 RECS Report). The RECS provides information on the use of energy in residential housing units in the United States. This information includes: The physical characteristics of the housing units surveyed; the appliances in those units, including space heating and cooling equipment; demographic characteristics of the households; the types of fuels used; and other information that relates to energy use. 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/contents.html.*

Clearly, ''household'' energy consumption behavior is the focus of the RECS. This behavior is a primary driver behind purchases and consumption of energy in the residential setting. The RECS collects information focused on the household, and the RECS Report provides data on energy consumption and expenditures per household.

Today's proposed definitions contain the same concepts as the RECS definitions (see 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/glossary/html*), and this is appropriate for several reasons. First, as a general matter, the RECS definitions appear to be reasonable and logical constructions of the term ''household.'' In content, they are very similar to definitions for household and related terms in the Census Bureau's housing survey, *e.g.*, Current Housing Reports, U.S. Census Bureau, Pub. No. H150/01, American Housing Survey for the United States:

2001 at Appendix A, A–9—A–11 (2002) (2002 Housing Survey Report). Second, the RECS uses ''household'' and related terms for purposes very similar to those for which DOE would use today's proposed definitions. The proposed definitions would provide a basis on which the Department could estimate the household energy use of particular products. The RECS uses the terms for gathering and presenting precisely this type of information, although it also collects information as to household energy use generally. Finally, DOE has used RECS data in its rulemakings concerning energy conservation standards, and intends to use this data whenever possible to determine whether it can classify as covered, and adopt standards for, consumer products not listed as covered in EPCA. For example, DOE used RECS data in rulemakings concerning efficiency standards for residential central air conditioners and heat pumps, and for residential water heaters. 65 FR 59589, 59595, 59600 (October 5, 2000); 66 FR 4474, 4477, 4478 (January 17, 2001).

As indicated above, today's proposed rule would incorporate from the RECS definitions the concept that a group of 10 or more unrelated people, even if living in a dwelling that would otherwise be a single housing unit, would not be a ''household'' for purposes of determining per-household energy consumption. The Census Bureau's Housing Survey uses a similar approach: It does not treat as a household a group that occupies living quarters inhabited by nine or more unrelated persons. 2001 Housing Survey Report, App. A at A–10. Although DOE might possibly use a different numerical cut off than the RECS uses, or a more subjective approach to describe groups that occupy a dwelling and act as a unit, the Department believes that the approach in the RECS is reasonable and wants to be able to rely on the RECS data to the greatest extent possible to evaluate household energy consumption for products it seeks to cover. DOE emphasizes that it is proposing this classification only for purposes of evaluating household energy consumption under EPCA. The proposed rule's definition of ''household'' is not intended in any way to address or make a judgment on the desirability of households of any particular size or composition.

Although today's proposed definitions are essentially the same in substance as the definitions the RECS uses for ''household'' and related terms, the proposed language is much less detailed, and differs from the language of the RECS definitions in a number of respects. The RECS definitions contain language specifically geared to EIA's purposes that is unnecessary for this rulemaking. Regarding the level of detail, most significant is that the RECS definition of ''household'' identifies various specific categories of people who would or would not be considered household members, whereas today's proposed rule does not identify such categories. The RECS gathers information as to the characteristics of the households it surveys, but DOE will not use today's proposed definitions as a basis for obtaining such information. Therefore, the RECS definition needs to delineate who is and is not within a household with much greater precision than today's proposed definition.

In addition, today's proposed definitions contain many technical and editorial changes to the RECS definitions. For example, the RECS definition of ''household'' refers to a person's residence ''at the time of the first field contact'' and to comparison of the numbers of households and of occupied housing units ''in the RECS.'' 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/glossary.html.* Such language does not belong in today's proposed definition of household, which would be used to provide a metric for assessing the energy use of a product.

Furthermore, because EIA did not develop the RECS definitions for inclusion in regulations, they are not in the form, and sometimes lack the precision, needed in a regulation. For example, consecutive sentences of the RECS definition of ''household'' describe members of the household as persons who have their ''usual or permanent place of residence'' in the same housing unit, who ''live in the housing unit,'' and who ''usually live in the household.'' 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/glossary.html.* These different descriptions create the potential for misinterpretation, and use of the word ''household'' within the definition of that term makes the definition circular. In today's proposed definitions, the Department has converted the EIA definitions into language suitable for use as a regulation, adhering to the concepts in these definitions while attempting to reduce the potential for misinterpretation, vagueness, and conflicts, as well as unnecessary wording.

Finally, today's proposed definition of ''energy use of a type of consumer product which is used by households'' reflects how EIA conducts the RECS and uses its definitions of household and related terms, although in one significant respect it departs from the RECS approach. First, the RECS concern all energy consumption at the housing unit where the household is located, *i.e.*, consumption both by members of a household and by visitors. 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/recs2001/questionaire.pdf.* The language of the RECS definitions of household and related terms, however, does not clearly provide that household energy consumption includes consumption by non-members of the household. The Department is proposing to define ''energy use of a type of consumer product which is used by households'' so as to clearly include such energy consumption.

Second, the RECS often addresses energy consumption on the grounds and in buildings belonging to the housing unit in which the household members reside, although its definition of ''housing unit'' does not explicitly include such areas. For example, the 2001 RECS addressed swimming pool heaters, well water pumps, and outdoor gas lighting (2001 RECS Report at Table HC5–4a), and previous surveys have addressed products such as electric lawn mowers. Today's proposed definition of ''energy use of a type of consumer product which is used by households'' provides in essence that energy consumption on the grounds of housing units occupied by the household, and in structures on those grounds, is part of household energy consumption.

Third, the RECS concerns energy consumption only at housing units that households occupy as primary residences. 2001 RECS Report at *http://www.eia.doe.gov/emeu/recs/recs2001/append_a.html* and *http://www.eia.doe.gov/emeu/recs/recs2001/questionaire.pdf.* Thus, the RECS does not include information as to household energy use in secondary residences. The EIA uses this approach for several reasons. First, the amount of energy consumed in secondary residences, although not negligible, is not large. Second, by covering a narrower universe—primary residences rather than all residences occupied by households—the sample of households from which the RECS gathers information will provide stronger support for the conclusions reached in the RECS as to household energy use. And third, this approach parallels the Census Bureau's definition of ''household'' and its approach to gathering information in its housing survey. EPCA's criteria for determining whether a consumer product qualifies for coverage and the adoption of standards, however, do not limit per-

household or aggregate household energy use to energy use in the primary residences of households. (42 U.S.C. 6292(b) and 6295(l)) Furthermore, the Department sees no reason to adopt such a limitation in evaluating products for coverage and standards. Therefore, today's proposed definitions provide in effect that household energy use by a product includes all energy that households consume in using that product, at all housing units they occupy, regardless of whether the housing units are primary residences. This would permit the Department to use data as to household energy consumption that includes both primary and secondary residences, if such data is available. When such data is not available, the Department would use data that includes only primary residences, such as the RECS data. Energy consumption at primary residences will always be at least a constituent element of total household energy use for consumer products, since for all or virtually all such products it appears to represent the most significant portion of household energy use. Thus, for products for which the available data includes energy use only at primary residences, such as the RECS data, the Department's use of such data as a basis for determining whether the product qualifies for coverage and the adoption of standards would provide an accurate but conservative estimate of per-household and aggregate household energy use under EPCA.

C. Conclusion

In sum, the Department proposes to adopt definitions of ''household'' and related terms, which it would use to determine whether products not currently covered under EPCA meet the EPCA criteria for classification as ''covered products.'' The Department would also use these definitions to determine whether, once a product has been so classified, it meets the additional per-household and aggregate household energy use criteria for setting energy conservation standards under EPCA for a product DOE classifies as covered. EPCA directs DOE to define ''household,'' and the Department believes the proposed definitions are reasonable and consistent with data the Department intends to use in making its determinations on household energy consumption.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's proposed rule neither classifies any product as covered under the Act, nor includes any requirement for any product. Thus, the proposed definitions would not have any economic impact on any business or entity. On the basis of the foregoing, DOE certifies that the proposed rule, if adopted as a final rule, will not impose a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

The Department reviewed today's proposed rule under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) Today's proposed rule concerns an element of the criteria the Department must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. It would not require any additional reports or record-keeping. Accordingly, this action is not subject to review under the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

In this rulemaking, DOE proposes to adopt definitions that would provide a basis for the Department to determine whether products not currently covered by EPCA meet the requirements for DOE to classify a product as a ''covered product'' under the Act, and to establish energy conservation requirements for the product. The definitions will not affect the quality or distribution of energy and, therefore, will not result in any environmental impacts. DOE, therefore, determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. More specifically, today's rule is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021 (rulemaking that amends an existing rule without changing the environmental effect of the rule being amended). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735).

The proposed rule published today would supply an element of the criteria the Department must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. This proposed rule will not directly affect state or local governments. However, it might ultimately have an indirect impact on

such governments because the rule could affect which products the Department covers and adopts standards for, under EPCA. If the Department ultimately decides to extend the coverage of its energy efficiency program to additional consumer products, the future application of coverage criteria could pre-empt state and local requirements for those newly covered products. Such impacts would not be the result of this proposal but would be the result of later notice—and—comment rulemakings. Thus today's rule, by itself, would not pre-empt any state or local action.

For these reasons, the Department has determined that today's proposed rule does not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov).*

This proposed rule will not directly affect any state, local or tribal government, or the private sector. It might ultimately have an indirect effect on state or local governments, and the private sector, since it could affect which products the Department covers and adopts standards for under EPCA. The Department's coverage and adoption of standards for products could pre-empt state and local requirements for those products, and would affect companies that manufacture and sell them. Such impacts will not result from adoption of today's proposed rule, however, and the rule would impose no mandates of any kind.

For these reasons, we have determined that the action proposed today does not provide for any Federal mandate that may result in estimated costs of $100 million or more. Therefore, the UMRA does not require a cost benefit analysis of today's proposal.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

The Department has determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency under general guidelines issued by OMB. The OMB guidelines were published in 67 FR 8452 (February 22, 2002), and the DOE guidelines were published in 67 FR 62446 (October 7, 2002). The Department has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administration of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented,

and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not significant energy action, and DOE has not prepared a Statement of Energy Effects.

IV. Public Participation

A. Determination Not To Hold Public Meeting

Under 42 U.S.C. 7191(c)(1), the Secretary may determine that ''no substantial issue of fact or law exists and that such rule * * * is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses,'' and that ''such proposed rule * * * or order may be promulgated in accordance with section 553 of title 5.'' Section 553(c) of title 5 permits the agency to ''give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.'' The Department has determined that a 45-day public comment period for written comments is sufficient and that a public meeting for oral presentation is unnecessary for this rulemaking. Since this rulemaking does not raise any issues of fact or law and merely provides a definition necessary for the Secretary to carry out authority already held by the Secretary under EPCA, this rulemaking is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

B. Submission of Written Comments

The Department will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice of proposed rulemaking. Please submit comments, data, and information electronically. Send them to the following e-mail address: *coverageconsumer products@ee.doe.gov.* 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. Comments in electronic format should be identified by the docket number EE–RM–03–630 and/or RIN number 1904–AB52, and wherever possible carry 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. No telefacsimiles (faxes) will be accepted.

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 of Energy will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval by the Office of the Secretary

The Secretary of Energy has approved issuance of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on April 17, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by adding definitions for ''energy use of a type of consumer product which is used by households,'' and ''household,'' in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Energy use of a type of consumer product which is used by households means the energy consumed by such product within housing units occupied by households (such as energy for space heating and cooling, water heating, the operation of appliances, or other activities of the households), and includes energy consumed on any property that is contiguous with a housing unit and that is used primarily by the household occupying the housing unit (such as energy for exterior lights or heating a pool).

* * * * *

Household means an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition:

(1) *Group quarters* means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

(2) *Housing unit* means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

(3) *Separate living quarters* means living quarters:

(i) To which the occupants have access either:

(A) Directly from outside of the building, or

(B) Through a common hall that is accessible to other living quarters and that does not go through someone else=s living quarters, and

(ii) Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building.

* * * * *

[FR Doc. 06–4195 Filed 5–3–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–61–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 650–15 and Tay 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 turbofan engines. That AD currently establishes cyclic life limits for certain part number (P/N) stage 1 high pressure turbine (HPT) discs and stage 1 (LPT) discs operating under certain flight plan profiles. This proposed AD would add Tay 651–54 turbofan engines to the applicability. This proposed AD would also require removing certain stage 1 HPT discs and stage 1 LPT discs at reduced cyclic life limits using a drawdown schedule. This proposed AD results from RRD updating their low-cycle-fatigue (LCF) analysis for stage 1 HPT discs and stage 1 LPT discs and reducing their cyclic life limits. We are proposing this AD to prevent cracks leading to turbine disc failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by July 3, 2006.

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

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–61–AD, 12 New England Executive Park, Burlington, MA 01803.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15872 Blankenfelde-Mahlow, Germany, telephone 49–0–33–7086–1768; fax 49–0–33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 99–NE–61–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On April 7, 2000, we issued AD 2000–08–01, Amendment 39–11687 (65 FR 20714, April 18, 2000). That AD establishes Tay 650–15 cyclic life limits for stage 1 HPT discs, P/N JR32013 and P/N JR33838, and stage 1 LPT discs, P/N JR32318A operating under certain flight plan profiles. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on Tay 650–15 and Tay 651–54 turbofan engines. The LBA advises that the current cyclic life limits for stage 1 HPT discs, P/N JR32013 and P/N JR33838, installed in Tay 650–15 and Tay 651–54 turbofan engines are too high.

Actions Since AD 2000–08–01 Was Issued

Since AD 2000–08–01 was issued, RRD updated their LCF analysis for stage 1 HPT discs, P/N JR32013 and P/N JR33838, and stage 1 LPT discs, P/N JR32318A, installed in Tay 650–15 and Tay 651–54 turbofan engines. Rolls-Royce Deutschland issued service information based on the LCF analysis.

Special Flight Permits Paragraph Removed

Paragraph (d) of the current AD, AD 2000–08–01, contains a paragraph pertaining to special flight permits. Even though this proposed AD does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this proposed AD. In July 2002, we published a new part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Relevant Service Information

We have reviewed and approved the technical contents of RRD Alert Service Bulletin (ASB) No. Tay–72–A1676, Revision 1, dated August 16, 2005, that contains updated cyclic life limits. That ASB also describes procedures for calculating and re-establishing the achieved cyclic life of discs that have been exposed to different flight plans. That ASB also contains cyclic life limit drawdown schedules for discs in engine flight plan profiles B, C, and D. The LBA classified this ASB as mandatory. With European Aviation Safety Agency approval, the LBA issued AD No. D–2005–252R1, dated August 31, 2005, to ensure the airworthiness of these Tay 650–15 and Tay 651–54 turbofan engines in Germany.

Bilateral Agreement Information

These engine models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require, for Tay 650–15 and Tay 651–54 engines:

- Calculating and re-establishing the achieved cyclic life of stage 1 HPT discs, P/N JR32013 and P/N JR33838, and stage 1 LPT discs, P/N JR32318A, that have been exposed to different flight plans; and
- Removing those stage 1 HPT discs and stage 1 LPT discs operated under engine flight plans A, B, C, and D at reduced cyclic life limits, using a drawdown schedule for certain discs and profiles.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 50 Tay 650–15 and Tay 651–54 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about one workhour per engine to calculate and re-establish the achieved cyclic life for a disc, and that the average labor rate is $80 per workhour. We estimate that the prorated cost of the life reduction per engine would be $15,000. Based on these figures, we estimate that if all of the engines required calculating and re-establishing achieved cyclic life, the total cost of the proposed AD to U.S. operators would be $752,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 99–NE–61–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–11687 (65 FR 20714, April 18, 2000) and by adding a new airworthiness directive, to read as follows:

Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Docket No. 99–NE–61–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 3, 2006.

Affected ADs

(b) This AD supersedes AD 2000–08–01, Amendment 39–11687.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines with stage 1 high pressure turbine (HPT) discs, part number (P/N) JR32013 and P/N JR33838, and stage 1 low pressure turbine (LPT) discs, P/N JR32318A, installed. These engines are installed on, but not limited to, Fokker Model F.28 Mark 0100, and Boeing 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW (727 QF).

Unsafe Condition

(d) This AD results from RRD updating their low-cycle-fatigue (LCF) analysis for stage 1 HPT discs and stage 1 LPT discs and reducing their cyclic life limits. We are issuing this AD to prevent cracks leading to turbine disc failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

(f) Information on the referenced engine flight plan profiles A, B, C, and D can be found in RRD Tay Engine Manual, Section 70–01–10.

Calculating and Re-Establishing Within 30 Days, the Achieved Cyclic Life of a Stage 1 HPT or Stage 1 LPT Disc Previously Exposed to Different Flight Plan(s)

(g) If a stage 1 HPT disc or stage 1 LPT disc was previously exposed to flight plan(s) different than the currently operated flight plan:

(1) You must calculate and re-establish the achieved cyclic life for that disc, within 30 days after the effective date of this AD.

(2) Use paragraphs 3.A. through 3.D.(2)(c) of Accomplishment Instructions of RRD Alert Service Bulletin (ASB) No. Tay–72–A1676, Revision 1, dated August 16, 2005, to calculate and re-establish the achieved cyclic life.

After an Engine Flight Plan Changeover, Calculating and Re-Establishing Within 30 Days, the Achieved Cyclic Life of Stage 1 HPT Discs and Stage 1 LPT Discs

(h) After an engine has a flight plan changeover:

(1) You must calculate and re-establish the achieved cyclic life for the stage 1 HPT disc and stage 1 LPT disc, within 30 days after the flight plan changeover.

(2) Use paragraphs 3.A. through 3.D.(2)(c) of Accomplishment Instructions of RRD ASB No. Tay–72–A1676, Revision 1, dated August 16, 2005, to calculate and re-establish the achieved cyclic life.

Removal of Stage 1 HPT Discs and Stage 1 LPT Discs From Service Tay 650–15 Engine Flight Plan Profile A

(i) Remove from service Tay 650–15 stage 1 HPT discs and stage 1 LPT discs operated under flight plan profile A, before accumulating 23,000 cycles-since-new (CSN), and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile B

(j) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile B and replace with serviceable parts:

(1) On or before July 31, 2007, before accumulating 21,000 CSN; and

(2) After July 31, 2007, before accumulating 20,000 CSN.

(k) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile B, before accumulating 21,000 CSN, and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile C

(l) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile C and replace with serviceable parts:

(1) On or before August 31, 2006, before accumulating 18,000 CSN; and

(2) After August 31, 2006, but on or before July 31, 2007, before accumulating 15,800 CSN; and

(3) After July 31, 2007, before accumulating 14,700 CSN.

(m) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile C, before accumulating 18,000 CSN, and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile D

(n) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile D and replace with serviceable parts:

(1) On or before August 31, 2006, before accumulating 14,250 CSN; and

(2) After August 31, 2006, before accumulating 11,000 CSN.

(o) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile D, before accumulating 14,250 CSN, and replace with serviceable parts.

Tay 651–54 Engines

(p) Remove from service Tay 651–54 stage 1 HPT discs and replace with serviceable parts:

(1) On or before August 31, 2006, before accumulating 14,250 CSN; and

(2) After August 31, 2006, before accumulating 12,600 CSN.

(q) Remove from service Tay 651–54 stage 1 LPT discs before accumulating 20,000 CSN and replace with serviceable parts.

Alternative Methods of Compliance

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

Related Information

(s) Luftfahrt-Bundesamt airworthiness directive No. D–2005–252R1, dated August 31, 2005, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on April 27, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–6737 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24467; Airspace Docket No. 06–ANM–2]

Proposed Revision of Class E Airspace; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Eagle, CO. Additional controlled airspace is necessary for the safety of aircraft executing the new Instrument Landing System or Localizer Distance Measuring Equipment (ILS or LOC.DME) Standard Instrument Approach Procedures (SIAP) and Flight Management System (FMS) SIAP at Eagle County Regional Airport.

DATES: Comments must be received on or before June 19, 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 FAA Docket No. FAA 2006–24467 and Airspace Docket No. 06–ANM–2, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service area Office, 1601 Lind Avenue, SW., Renton, WA 98055; telephone (425) 227–2527.

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 (FAA–2006–24467 and Airspace Docket No. 06–ANM–2) and be submitted in triplicate to the Docket Management System (see the **ADDRESSES** section for the address and phone number).

You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–24467 and Airspace Docket No. 06–ANM–2''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the Class E airspace area at Eagle County Regional Airport, Eagle, CO. Additional controlled airspace is necessary to accommodate aircraft using the new ILS

or LOC DME SIAP at Eagle County Regional Airport. This controlled airspace is necessary for the safety of IFR aircraft executing the new SIAPs at Eagle County Regional Airport, Eagle, CO.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this 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 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

Accordingly, pursuant to the authority delegated to me, 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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005 is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ANM CO Eagle, CO [Revised]

Eagle County Regional Airport, CO
(Lat. 39°38′33″ N., long. 106°55′04″ W.)

That airspace extending upward from the surface of the earth within 4.4 mile radius of Eagle County Regional Airport, and within 4.0 miles each side of the 079(T)°, 066°(M) bearing extending from the 4.4 mile radius to 16.5 miles east of the Eagle County Regional Airport. Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM CO Eagle, CO [Revised]

Eagle County Regional Airport, CO
(Lat. 39°38′33″ N., long. 106°55′04″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Eagle County Regional Airport; within 9.5 miles north and 6 miles south of the 085°(T), 072°(M) bearing from the Eagle County Regional Airport extending from the 10-mile radius area to 22.5 miles northeast of the airport.

* * * * *

Issued in Seattle, Washington, on April 24, 2006.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. E6–6730 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–043]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Catholic Charities Dragon Boat Races'', a marine event to be held September 9, 2006 on the waters of the Patapsco River, Inner Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Baltimore Inner Harbor during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 5, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspection and Investigation Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspection and Investigation Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–043), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 9, 2006, Associated Catholic Charities, Inc. will sponsor Dragon Boat Races in the Inner Harbor at Baltimore, MD. The event will consist of 40 teams rowing Chinese Dragon Boats in heats of 2 to 4 boats for a distance of 400-meters. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patapsco River, Inner Harbor, Baltimore, MD. The regulations will be in effect from 5:30 a.m. to 6:30 p.m. on September 9, 2006. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Baltimore Inner Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Baltimore Inner Harbor during the event.

Although this regulation prevents traffic from transiting a portion of the Baltimore Inner Harbor during the event, this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–043 to read as follows:

§ 100.35–T05–043 Patapsco River, Inner Harbor, Baltimore, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Catholic Charities Dragon Boat races under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes the waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ West. All coordinates reference Datum NAD 1983.

(b) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(c) *Effective period:* This section will enforced from 5:30 a.m. to 6:30 p.m. on September 9, 2006.

Dated: April 20, 2006.

Larry L. Hereth,

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

[FR Doc. E6–6733 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–042]

RIN 1625–AA08

Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for ''Ragin' on the River'', a power boat race to be held on the waters of the Susquehanna River adjacent to Port Deposit, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Susquehanna River adjacent to Port Deposit, Maryland during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before June 5, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspection and Investigation Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this

preamble as being available in the docket are part of docket (CGD05–06–042), will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspection and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–042), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Annually, during Labor Day weekend, the Port Deposit Chamber of Commerce sponsors the ''Ragin' on the River'' power boat race, on the waters of the Susquehanna River. The event consists of approximately 60 inboard hydroplanes and runabouts racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish this permanent rule on specified waters of the Susquehanna River adjacent to Port Deposit, Maryland. The regulated area includes a section of the Susquehanna River approximately 3500 yards long, and bounded in width by each shoreline. The regulated area is bounded on the south by the U.S. I–95 fixed highway bridge. The area is bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W, the northern boundary line runs from shoreline to shoreline and is located approximately 500 yards north of Port Deposit, Maryland. The permanent special local regulations will be enforced annually from 11:30 a.m. to 6:30 p.m. on Saturday and Sunday of Labor Day weekend, and will restrict general navigation in the regulated area during the power boat race. In the case of inclement weather this event may be held on Monday, Labor Day. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Susquehanna River adjacent to Port Deposit, Maryland during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will effect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Susquehanna River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, annually from 11:30 a.m. to 6:30 p.m. on Saturday and Sunday of Labor Day weekend. Although the regulated area will apply to the entire width of the river, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that reduces wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.535 to read as follows:

§ 100.535 Susquehanna River, Port Deposit, Maryland.

(a) *Regulated area.* A regulated area is established for the waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the ''Ragin' on the River'' power boat race under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) All persons and vessels must comply with the instructions of the Official Patrol. The operator of a vessel

in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed. When authorized to transit the regulated area, all vessels shall proceed at a minimum safe speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement.* This section will be enforced from annually 11:30 a.m. to 6:30 p.m. on Saturday and Sunday of Labor Day weekend. If the races are postponed due to weather, then the special local regulations will be enforced during the same time period on Monday, Labor Day. A notice of enforcement of this section will be published annually in the **Federal Register** and disseminated through the Fifth District Local Notice to Mariners and marine safety radio broadcasts.

Dated: April 21, 2006.

L.L. Hereth,

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

[FR Doc. E6–6732 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–010]

RIN 1625–AA09

Drawbridge Operation Regulation; Liberty Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the State Route 433 (S433) pontoon span bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. The State of Louisiana, Department of Transportation and Development, has requested that the notice required for an opening of the draw be changed from 12 hours to 4 hours.

DATES: Comments and related material must reach the Coast Guard on or before July 3, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S. Coast Guard, at the request of the Louisiana Department of Transportation and Development (LDOTD), proposes to change the existing operating regulation of the S433 Pontoon Span Bridge across Liberty Bayou, mile 2.0, at Slidell, Louisiana. The change will reduce the minimum notice, required for an opening of the draw, from 12 hours to 4 hours. Currently, the draw opens on signal; except that from 9 p.m. to 5 a.m. the draw will open on signal if at least 12 hours notice is given. LDOTD is changing the bridge tender work schedule, which has reduced the time required for a bridge tender to man the bridge for an opening.

Traffic counts indicate that an average of 6000 vehicles cross the bridge daily and approximately 220 or about 3.7% of those vehicles cross between the hours of 9 p.m. and 5 a.m. Bridge tender logs for a three-month period show that the bridge opens on an average of 6 times per day to pass vessels. None of the vessel openings during these months were between the hours of 9 p.m. and 5 a.m.

Navigation at the site of the bridge consists primarily of recreational fishing vessels, recreational powerboats and sailboats. Alternate routes are not available.

Discussion of Proposed Rule

The proposed rule would change the existing regulation in 33 CFR 117.469 to decrease the length of time that is required for a vessel to request an opening of the draw from 12 hours to 4 hours. LDOTD is changing the bridge tender work schedule, which has reduced the time required for a bridge tender to man the bridge for an opening. Thus, it is no longer necessary to require a full 12-hour notice for a drawbridge opening. As a result of this change, mariners will be able to more easily schedule passage through the bridge.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The Coast Guard does not consider this rule to be ''significant'' under that Order because it does not adversely affect the way vessels operate on the waterway.

Small Entities

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

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

adversely affect the owners and operators of vessels needing to transit the bridge between 9 p.m. and 5 a.m. daily. It would benefit the mariner in that it would reduce the time needed to give notice to request an opening of the draw.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridge, it falls within this exclusion.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.469 is revised to read as follows:

§ 117.469 Liberty Bayou.

The draw of the S433 bridge, mile 2.0 at Slidell, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 4 hours notice is given.

Dated: April 25, 2006.

R.F. Duncan,

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

[FR Doc. E6–6738 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–032]

RIN 1625–AA00

Safety Zone; City of Lynn, Fourth of July Fireworks Display, Nahant Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the City of Lynn ''Fourth of July Fireworks'' occurring in Nahant Bay, Massachusetts. This safety zone is necessary to protect the life and property of the maritime public from the potential hazards associated with a fireworks display. The safety zone would temporarily prohibit entry into or movement within this portion of Nahant Bay during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before June 5, 2006.

ADDRESSES: You may mail comments and related material to Sector Boston, 427 Commercial Street, Boston, MA. Sector Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket will become part of this docket and will be available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5007.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (CGD01–06–032), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting; however, you may submit a request for a meeting by writing to Sector Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This rule proposes to establish a safety zone on the waters of Nahant Bay within a 400-yard radius of the fireworks barge located at approximate position 42° 27′.686″ N, 070°55′.101″ W. The safety zone would be in effect from 8 p.m. until 10:30 p.m. EDT on July 3, 2006.

The safety zone would temporarily restrict movement within the effected portion of Nahant Bay and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside the safety zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period of this proposed rule via safety marine information broadcasts and Local Notice to Mariners.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone in Nahant Bay. The safety zone would be in effect from 8 p.m. until 10:30 p.m. EDT on July 3, 2006. Marine traffic may transit safely outside of the zone in the majority of Nahant Bay during the event. This safety zone would control vessel traffic during the fireworks display to protect the safety of the maritime public.

Due to the limited time frame of the fireworks display, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this proposed rule would prevent traffic from transiting a portion of Nahant Bay during the closure period, the effects of this rule would not be significant for several reasons: Vessels will be excluded from the proscribed area for only two and one half hours, vessels will be able to transit around the zone in the unrestricted portion or Nahant Bay during the event, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners notifying them or the parameters and effective period of the zone.

Small Entities

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

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

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of Nahant Bay from 8 p.m. EDT on July 3, 2006 to 10:30 p.m. EDT on July 3, 2006.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only two and one half hours, vessel traffic could pass safely around the safety zone during the closure period, and advance notifications via safety marine informational broadcasts and Local Notice to Mariners will be made before and during the effective period.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Paul English at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 8 p.m. EDT until 10:30 p.m. EDT on July 3, 2006, add temporary § 165.T06–032 to read as follows:

§ 165.T01–032 Safety Zone; City of Lynn Fourth of July Fireworks Display, Nahant Bay, Massachusetts

(a) *Location.* The following area is a safety zone: All navigable waters of Nahant Bay within a 400-yard radius of the fireworks barge located at approximate position 42°27′686″ N, 070°55′101″ W.

(b) *Effective date.* This section is effective from 8 p.m. until 10:30 p.m. EDT on July 3, 2006.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: April 21, 2006.

J.C. O'Connor III,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Boston, Massachusetts.

[FR Doc. E6–6740 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–012]

RIN 1625–AA00

Safety Zone: Town of Weymouth Fourth of July Celebration Fireworks, Weymouth, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Town of Weymouth's Fourth of July Celebration Fireworks in Weymouth, Massachusetts, currently scheduled to occur on July 1, 2006 with a rain date of July 2, 2006. The safety zone is needed to protect the maritime public from the potential hazards posed by a fireworks display. The safety zone will prohibit entry into or movement within this portion of the Weymouth Fore River during its effective period.

DATES: Comments and related material must reach the Coast Guard on or before June 5, 2006.

ADDRESSES: You may mail comments and related material to Sector Boston 427 Commercial Street, Boston, MA. Sector Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5007.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–06–012), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed rule establishes a safety zone on the navigable waters of the Weymouth Fore River within a five hundred (500) yard radius of the fireworks launch barge located at approximate position 42°15.3″ N, 070°56.8″ W. The safety zone would be in effect from 9 p.m. EDT until 11 p.m. EDT on July 1, 2006, with a rain date of July 2, 2006.

This safety zone would temporarily prohibit entry into or movement within the effected portion of the Weymouth Fore River and is needed to protect the maritime public from the potential dangers posed by a fireworks display.

Discussion of Proposed Rule

The Coast Guard is establishing a temporary safety zone in a portion of the Weymouth Fore River. The safety zone would be in effect from 9 p.m. EDT until 11 p.m. EDT on July 1, 2006 with a rain date of July 2, 2006. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the Weymouth Fore River except for the portion delineated by this rule. This safety zone will control vessel traffic during the fireworks event to protect the safety of the maritime public.

Due to the limited time frame of the firework display and because the zone leaves the majority of the Weymouth Fore River open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this rule would prevent vessel traffic from transiting a portion of the Weymouth Fore River during the fireworks event, the effect of this regulation would not be significant for several reasons: vessels will be excluded from the proscribed area for only two hours, vessels will be able to operate in the majority of the Weymouth Fore River during this time period; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or

operators of vessels intending to transit or anchor in the effected portion of the Weymouth Fore River from 9 p.m. EDT on July 1, 2006 until 11 p.m. EDT on July 1, 2006 with a rain date of July 2, 2006.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the safety zone during the effective period; the effective period is limited in duration, and advance notifications via safety marine informational broadcast and local notice to mariners will be made to the local maritime community.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Paul English at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under 2.B.2 of the Instruction. Therefore, we believe that this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34) (g), as it would establish a safety zone. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 33 CFR 1.05–1(g),

6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T06–012 to read as follows:

§ 165.T06–012 Safety Zone: Town of Weymouth Fourth of July Celebration Fireworks—Weymouth, Massachusetts.

(a) *Location.* The following area is a safety zone: All navigable waters of the Weymouth Fore River within a 500 yard radius of the fireworks launch barge located at approximate position 42°15.3″ N, 070°56.8″ W.

(b) *Effective Date.* This section is effective from 9 p.m. EDT on July 1, 2006 until 11 p.m. EDT on July 1, 2006, with a rain date of July 2, 2006.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: April 21, 2006.

J.C. O'Connor III,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Boston, Massachusetts.

[FR Doc. E6–6731 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0159; FRL–8165–9]

RIN 2060–AN40

Proposed Rule on the Treatment of Data Influenced by Exceptional Events; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document makes a minor correction to the regulatory language for the proposed rule entitled ''Treatment of Data Influenced by Exceptional Events.'' The proposed rule was initially published in the **Federal Register** on March 10, 2006.

FOR FURTHER INFORMATION CONTACT: For questions regarding the proposed rulemaking, contact Mr. Larry Wallace, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–0906 or by e-mail at: *wallace.larry@epa.gov.*

Correction

This document corrects § 50.1, paragraph (j) to remove the reference to 40 CFR 50.13 and replace it with a reference to 40 CFR 50.14. In the proposed rule for ''The Treatment of Data Influenced by Exceptional Events'', 71 FR 12592, March 10, 2006, beginning on page 12608, column two, make the following correction under the section entitled ''Part 50—National Primary And Secondary Ambient Air quality Standards.'' Under § 50.1 entitled ''Definitions'', revise paragraph (j) to read as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

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

2. Revise paragraph (j) to read as follows:

§ 50.1 Definitions.

* * * * *

(j) Exceptional event means an event that affects air quality; is not reasonably controllable or preventable; is a natural event or an event caused by human activity that is unlikely to recur at a particular location; and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event; it does not include stagnation of air masses or meteorological inversions; a meteorological event involving high temperatures or lack of precipitation; or air pollution relating to source noncompliance.

* * * * *

Dated: April 26, 2006.

Jeffrey Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–6753 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2005–0159; FRL–8165–8]

RIN 2060–AN40

Extension of Public Comment Period for Proposed Rule on the Treatment of Data Influenced by Exceptional Events

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the proposed rule entitled ''Treatment of Data Influenced by Exceptional Events.'' The proposed rule was initially published in the **Federal Register** on March 10, 2006. Written comments on the proposal for the rulemaking were to be submitted to EPA on or before May 9, 2006 (a 60-day public comment period). The EPA is extending the public comment period until May 25, 2006.

DATES: The public comment period for this proposed rule is extended until May 25, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0159 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2005–0159, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B–102, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2005–0159. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0159. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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.gove/epahome.dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: For questions regarding the proposed rulemaking, contact Mr. Larry Wallace, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–0906 or by e-mail at: *wallace.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Extension of Public Comment Period

The proposed rule was signed by the Administrator on March 1, 2006 and published in the **Federal Register** on March 10, 2006 (71 FR 12592). The EPA has received several requests for additional time to comment on the proposal. The EPA is therefore extending the comment period until May 25, 2006.

Dated: April 26, 2006.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–6752 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0280; FRL–8165–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Seven Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for seven major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania or the Commonwealth) SIP-approved generic RACT regulations. EPA is proposing to approve these revisions in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 5, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0280 by one of the following methods:

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

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0280, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0280. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O.

Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, or by e-mail at *devose.pauline@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 4, 2003 and November 21, 2005, PADEP submitted revisions to the Pennsylvania SIP. These SIP revisions consist of source-specific operating permits, and/or plan approvals issued by PADEP to establish and require RACT for sixteen individual sources on February 4, 2003, and sixteen individual sources on November 21, 2005 pursuant to Pennsylvania's SIP-approved generic RACT regulations. This proposed rulemaking covers the Commonwealth's source-specific RACT determinations for seven of those sources. The remaining RACT determinations submitted by PADEP on February 4, 2003 and November 21, 2005 will be the subject of separate rulemakings.

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, Pennsylvania is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the ''generic RACT regulations''. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA), or Operating Permit (OP). The Commonwealth then submits these PAs, or OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that the PADEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 Pa Code Chapters 121, 123 and 145.

II. Summary of the SIP Revisions

The following table identifies the sources and the individual operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Operating permit (OP #)	Source type	''Major source'' pollutant
The Frog, Switch & Manufacturing Co.	Cumberland	21–2011	Manganese Steel and Castings Foundry.	VOC.
Armstrong World Industries, Inc	Lancaster	36–2002	Sheet and Flooring Products Manufacturer.	VOC and NO_X.
Merck & Co., Inc	Northumberland	49–0007B	Chemical Process Facility	VOC and NO_X.
Peoples Natural Gas Company	Clarion	16–124	Natural Gas Compressor	VOC and NO_X.
Dart Container Corporation	Lancaster	36–2015	Expanded Polystyrene Manufacturing Facility.	VOC and NO_X.
AT&T Microelectronics	Lehigh	39–0001	Semiconductors Manufacturing	VOC and NO_X.
West Penn Power Co	Greene	30–000–099	Power Plant	VOC and NO_X.

Interested parties are advised that copies of Pennsylvania's SIP submittals for these sources, including the actual OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposals (referenced in PADEP's evaluation memoranda) are included and may be viewed in their entirety in both the electronic and hard copy versions of the docket for this final rule. As previously stated, all documents in the electronic docket are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Proposed Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on February 4, 2003 and November 21, 2005 to establish and require VOC and NO_X RACT for seven individual sources pursuant to the Commonwealth's SIP-approved generic RACT regulations. EPA is soliciting public comments on this proposed rule to approve these source-specific RACT determinations established and imposed by PADEP in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule to approve seven source-specific RACT determinations established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 24, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–6771 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–0548; FRL–8165–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Charleston Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Charleston area be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for the Charleston area that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that the Charleston area has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002–2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Charleston area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Charleston area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before June 5, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–0548 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2005–0548, Makeba Morris, Chief, Air Quality Planning Branch.

D. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–0548. 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.epa.gov/edocket, http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Table of Contents

I. What Actions Are EPA Proposing To Take?
II. What Is the Background for These Proposed Actions?
III. What Are the Criteria for Redesignation to Attainment?
IV. Why Is EPA Taking These Actions?
V. What Would be the Effect of These Actions?
VI. What Is EPA's Analysis of the State's Request?
VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Charleston Area Adequate and Approvable?
VIII. Proposed Action
IX. Statutory and Executive Order Reviews

I. What Actions Are EPA Proposing To Take?

On November 30, 2005, WVDEP formally submitted a request to redesignate the Charleston area from nonattainment to attainment of the 8-hour NAAQS for ozone. On November 30, 2005, West Virginia submitted a maintenance plan for the Charleston area as a SIP revision, to ensure continued attainment over the next 12 years. The Charleston area is composed of Kanawha and Putnam Counties. It is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Charleston area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Charleston area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the area, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment in the Charleston area for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the Charleston area for transportation conformity purposes. Concurrently, the State is requesting that EPA approve the maintenance plan as meeting the requirements of CAA 175(A)(b) with respect to the 1-hour ozone maintenance plan update.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Charleston area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 25, 2004 and published on April 30, 2004 (69 FR 23857). On June 15, 2005 (69 FR at 23396), the 1-hour ozone NAAQS was revoked in the Charleston area (as well as most other areas of the country). See 40 CFR 50.9(b); 69 FR at 23396, April 30, 2004; and see 70 FR 44470, August 3, 2005.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by an NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for

subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Charleston area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2002–2004 indicates that the Charleston area has a design value of 0.081 ppm. Therefore, the ambient ozone data for the Charleston area indicates no violations of the 8-hour ozone standard. Monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard.

B. The Charleston Area

The Charleston area consists of Kanawha and Putnam Counties. Prior to its designation as an 8-hour ozone nonattainment area, the Charleston area was a maintenance area for the 1-hour ozone nonattainment NAAQS.

On November 30, 2005, the WVDEP requested that the Charleston area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved in the Charleston area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) the state containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On November 30, 2005, the WVDEP requested redesignation of the Charleston area to attainment for the 8-hour ozone standard. On November 30, 2005, the WVDEP submitted a maintenance plan for the Charleston area as a SIP revision, to assure continued attainment over the next 12 years, until 2018. Concurrently, West Virginia is requesting that EPA approve maintenance plan as meeting the requirements of CAA 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is proposing to approve the maintenance plan to fulfill the requirement of section 175A(b) for submission of a maintenance plan update eight years after the area was redesignated to attainment of the 1-hour ozone NAAQS. EPA believes that such an update must ensure that the maintenance plan in the SIP provides maintenance of the NAAQS for a period of 20 years after the area is initially redesignated to attainment. EPA can propose approval because the maintenance plan, which demonstrates maintenance of the 8-hour ozone NAAQS through 2018, also demonstrates maintenance of the 1-hour ozone NAAQS through 2018, even though the latter standard is no longer

in effect. The Charleston area was redesignated to attainment of the 1-hour ozone NAAQS on September 6, 1994 (59 FR 45985), and, the initial 1-hour ozone maintenance plan provided for maintenance through 2005. Section 51.905(e) of the ''Final Rule To Implement the 8-Hour Requirements—Phase 1,'' April 30, 2004 (69 FR 23999) specifies the conditions that must be satisfied before EPA may approve a modification to a 1-hour maintenance plan which: (1) removes the obligation to submit a maintenance plan for the 1-hour ozone NAAQS eight years after approval of the initial 1-hour maintenance plan and/or (2) removes the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. EPA believes that section 51.905(e) of the final rule allows a State to make either one or both of these modifications to a 1-hour maintenance plan SIP once EPA approves a maintenance plan for the 8-hour NAAQS. The maintenance plan will not trigger the contingency plan upon a violation of the 1-hour ozone NAAQS, but upon a violation of the 8-hour ozone NAAQS. EPA believes that the 8-hour standard is now the proper standard which should trigger the contingency plan now that the 1-hour NAAQS has been revoked and now that approval of the maintenance plan would allow the State to remove a 1-hour NAAQS obligation from the SIP. EPA has determined that the Charleston area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Charleston area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Charleston area for the next 12 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY

[tpd]

Year	NO_X	VOC
2004	26.4	16.1
2009	19.8	11.6
2018	8.20	7.20

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that the Charleston nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the WVDEP's November 30, 2005 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Charleston Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Charleston area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Charleston area there is one ozone monitor, located in Kanawha County, that measures air quality with respect to ozone. As part of its redesignation request, West Virginia submitted ozone monitoring data for the years 2002–2004 (the most recent three years of data available as of the time of the redesignation request). This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

TABLE 2.—CHARLESTON NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; CHARLESTON MONITOR, AIRS ID 54–033–4000

Year	Annual 4th high reading (ppm)
2002	0.087
2003	0.088
2004	0.069
2005	0.079

The average for the 3-year period 2002 through 2004 is 0.081 ppm.

The data for 2002–2004 show that the area has attained the standard, and preliminary data for the 2005 ozone season show that the annual fourth high reading is 0.079 ppm and that the area continues to attain the standard. The data collected at the Charleston monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The WVDEP's request for redesignation for the Charleston area indicates that the data was quality assured in accordance with 40 CFR part 58. The WVDEP uses AIRS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia indicates that the Charleston area has attained the 8-hour ozone NAAQS.

B. The Charleston Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that West Virginia has met all SIP requirements for the Charleston area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP

meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the Charleston area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the West Virginia SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that West Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Charleston area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Since the Charleston area was maintaining attainment of the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004, no Part D submittals under the 1-hour standard were required or made for this area.

Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. The Charleston area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

With respect to the 8-hour standard, EPA proposes to determine that the West Virginia SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request. Because the State submitted a complete redesignation request for the Charleston area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to the Charleston area for the purposes of redesignation

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior

to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect, because PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' West Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in the Charleston area, and therefore, West Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. West Virginia's SIP-approved PSD program will become effective in the area upon redesignation to attainment in the Charleston area. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

3. The Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the West Virginia SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein.

The Charleston area was maintaining attainment of the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the area was redesignated as a 1-hour maintenance area, no Part D SIP submittals were previously required. Because there are no current SIP submission requirements applicable for the purposes of redesignation of the Charleston area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Charleston area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Charleston Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the State has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004

[tpd]

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	10.1	21.2	5.5	15.7	52.5
Year 2004*	10.0	20.9	5.3	13.4	49.6
Diff. (02–04)	−0.1	−0.3	−0.2	−2.3	−2.9
Nitrogen Oxides (NO_X)					
Year 2002	133.8	2.4	13.0	25.5	174.7
Year 2004*	87.8	2.5	12.7	22.0	125.0
Diff. (02–04)	−46.0	+0.1	−0.3	−3.5	−49.7

*2004 Emissions estimated by linear interpolation for all sectors except highway and point EGUs.

Between 2002 and 2004, VOC emissions were reduced by 2.9 tpd, and NO_X emissions were reduced by 49.7 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Charleston area:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Clean Diesel Program.

West Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local VOC and NO_X emissions. Nearly all of the reductions in VOC are attributable to mobile source emission controls such as NLEV and Tier 2 programs. The mobile programs produced 2.3 tpd of VOC reductions and 3.5 tpd of NO_X reductions.

Nearly all of the reductions in NO_X are attributable to the implementation of the NO_X SIP Call. West Virginia has indicated in its submittal that the implementation of the NO_X SIP Call, with its mandatory reductions in NO_X emissions from Electric Generating Units (EGUs) and large industrial boilers (non-EGUs), reduced NO_X emissions throughout the Charleston area. NO_X emissions from EGUs in the Charleston area were reduced by 6,798 tons between 2002 and 2004. Also, NO_X emissions from non-EGU sources in the Charleston area were reduced by 806 tons between 2003 and 2004. The WVDEP believes that the improvement in ozone air quality from 2002 to 2004 was the result of identifiable, permanent and enforceable reductions in ozone precursor emissions for the same period.

Additionally, WVDEP has identified, but not quantified, additional reductions in VOC emissions that will be achieved as a co-benefit of the reductions in the emission of hazardous air pollutants (HAPs) as a result of implementation of EPA's Maximum Achievable Control Technology (MACT) standards.

Other regulations, such as the non-road diesel, 69 FR 39858 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce emissions impacting the Charleston area monitor. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_X emissions by about 74 percent nationally. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

5. The Charleston Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Charleston area to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the area for at least 12 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A(b) and replace the 1-hour ozone maintenance plan update requirement.

Under 40 CFR 51.905(e), the EPA may approve a SIP revision requesting the removal of the obligation to implement contingency measures upon a violation of the 1-hour ozone NAAQS when the State submits and EPA approves an attainment demonstration for the 8-hour ozone NAAQS for an area *initially designated* nonattainment for the 8-hour NAAQS or a maintenance SIP for the 8-hour NAAQS for an area *initially designated* attainment for the 8-hour NAAQS.

The rationale behind 40 CFR 51.905(e) is to ensure that the area maintains the applicable ozone standard (the 8-hour standard in areas where the 1-hour standard has been revoked). EPA believes this rationale analogously applies to areas that were not initially designated, but are *redesignated* as attainment with the 8-hour ozone NAAQS. Therefore, EPA intends to treat redesignated areas as though they had been initially designated attainment of the 8-hour ozone NAAQS, and accordingly proposes to relieve the Charleston area of its maintenance plan obligations with respect to the 1-hour standard. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Charleston area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period (12 years in Charleston's case). To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

Analysis of the Charleston Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Charleston area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

The WVDEP prepared comprehensive VOC and NO_X emissions inventories for the Charleston area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, WVDEP used the following approaches and sources of data:

(i) *Point source emissions*—West Virginia maintains its point source emissions inventory data on the i-STEPS database, which is commercial software purchased from a vendor, Pacific Environmental Services. Facilities subject to emissions inventory reporting requirements were those operating point sources subject to Title V permitting requirements. Affected sources were identified from the WVDEP's Regulation 30 database which is maintained by the WVDEP's Title V Permitting Group. For the 2002 inventory, diskettes were populated with i-STEPS software information, as well as source-specific data from the previous year and sent to facilities for updates of their 2002 activity and emissions data. The facilities then sent the diskettes back to the State and, where WVDEP staff quality assured the data and submitted it to EPA's Central

Data Exchange (CDX) site as well as to contractors for the Visibility Improvement State and Tribal Association of the Southeast (VISTAS), a Regional Planning Organization (RPO).

WVDEP used the VISTAS revised 2002 base year point source inventory including both EGUs and non-EGUs. The WVDEP took VISTAS data and calculated the emissions for the EGUs and non-EGUs for a typical summer weekday for peak ozone season (June thru August).

(ii) *Area source emissions*—In order to calculate the area source emissions inventory the WVDEP took the annual values from the VISTAS base year inventory and derived the typical ozone summer weekday, using procedures outlined in the EPA's Emissions Modeling Clearinghouse (EMCH) Memorandum, ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles, April 29, 2002.'' This enabled WVDEP to arrive at the ''typical'' summer day emissions.

(iii) *On-road mobile source emissions*—VISTAS developed 2002 on-road mobile (highway) emissions inventory data based on vehicle miles traveled (VMT) updates provided by WVDEP. VISTAS also estimated future emissions based upon expected growth for the future years 2009 and 2018. However, Federal Transportation Conformity requirements dictate that the WVDEP consult with the Metropolitan Planning Organization (MPO) responsible for transportation planning in developing SIP revisions which may establish highway emissions budgets. This applies to the maintenance plan submitted by WVDEP on November 30, 2005. Therefore, the WVDEP has consulted with the Charleston MPO, and the Regional Intergovernmental Council (RIC). The RIC provided base year and projection emissions data consistent with their most recent available Travel Demand Model (TDM) results along with EPA's most recent emission factor model, MOBILE6.2. The WVDEP used these data to estimate highway emissions and, in consultation with the RIC, to develop highway emissions budgets for VOC and NO_X. The RIC must evaluate future Long Range Transportation Plans and Transportation Improvement Programs to ensure that the associated emissions are equal to or less than the final emissions budgets. The budgets are designed to facilitate a positive conformity determination while ensuring overall maintenance of the 8-hour NAAQS. It should be noted that an actual decrease in highway emissions occurred between 2002 and 2004.

(iv) *Mobile non-road emissions*—Mobile non-road emissions were calculated in the same manner as the area source emissions.

The 2004 attainment year VOC and NO_X emissions for the Charleston area are summarized along with the 2009 and 2018 projected emissions for this area in tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that West Virginia has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On November 30, 2005, the WVDEP submitted a SIP revision to supplement its November 30, 2005 redesignation request. The submittal by WVDEP consists of the maintenance plan as required by section 175A of the CAA. The Charleston area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Charleston area through the year 2018. The Charleston area maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Tables 4 and 5 specify the VOC and NO_X emissions for the Charleston area for 2004, 2009, and 2018. The WVDEP chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 12-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018

[tpd]

Source category	2004 VOC emissions [1]	2009 VOC emissions	2018 VOC emissions
Mobile	13.4	11.6	7.2
Nonroad	5.3	4.6	3.5
Area	20.9	20.1	22.1
Point [2]	10.0	10.4	12.2
Total	49.6	46.7	45.0

[1] 2004 Emissions estimated by linear interpolation for all sectors except highway and EGUs.
[2] Non-EGU emissions updated for 2008 NO_X SIP Call.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018

[tpd]

Source category	2004 NO_X emissions [1]	2009 NO_X emissions	2018 NO_X emissions
Mobile	22.0	19.8	8.2
Nonroad	12.7	12.0	10.1
Area	2.5	2.6	2.9
Point [2]	87.8	67.9	59.4
Total	125.0	102.3	80.6

[1] 2004 Emissions estimated by linear interpolation for all sectors except highway and EGUs.
[2] Non-EGU emissions updated for 2008 NO_X SIP Call.

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); 66 FR 2001 (January 18, 2001); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); 69 FR 39858 (June 29, 2004).

In addition to the permanent and enforceable measures, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005, (70 FR 25161) should have positive impacts on the State's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the Charleston area.

Currently, the State is in the process of adopting rules to address CAIR through state rules 45CSR3, 45CSR40, and 45CSR41, which require annual and ozone season NO_X reductions from EGUs and ozone season NO_X reductions from non-EGUs. These rules will be submitted to EPA as a SIP revision by September 11, 2006 as required in the May 12, 2005, (70 FR 25161) **Federal Register** publication.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that WVDEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Charleston area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Charleston area. West Virginia will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The State of West Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, federal programs such as Tier2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the Charleston area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, the State requires ambient and source emissions data to track attainment and maintenance. The WVDEP proposes to fully update its point, area, and mobile emission inventories at 3-year intervals as required by the Consolidated Emissions Reporting Rule (CERR) to assure that its growth projections relative to emissions in these areas are sufficiently accurate to assure ongoing attainment with the NAAQS. The WVDEP will review stationary source VOC and NO_X emissions by review of annual emissions statements and by update of its emissions inventories. The area source inventory will be updated using non-point NEI. However, some source categories may be updated using historic activity levels determined from Bureau of Economic Analysis (BEA) data or West Virginia University/Regional Research Institute (WVU/RRI) population estimates. The mobile source inventory model will be updated by obtaining county-level VMT from the West Virginia Department of Transportation (WVDOT) for the subject year and calculating emissions using the latest approved MOBILE model. Alternatively, the highway emissions may be obtained in consultation with the MPO, the RIC, using methodology similar to that used for Transportation Conformity purposes.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Charleston area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The State's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The State's maintenance plan lays out two situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *If the triennial inventories indicate emissions growth in excess of 10 percent of the 2002 base-year inventory or if a monitored air quality exceedance pattern indicates that an ozone NAAQS violation may be imminent*—The maintenance plan states that an exceedance pattern would include, but is not limited to, the measurement of three exceendances or more occurring at the same monitor during a calendar year. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to assure that its growth projections relative to emissions in the area are sufficiently accurate to assure ongoing attainment with the NAAQS. If the 2002 base-year inventory or a monitored air quality exceedance pattern occurs, the following measure will be implemented:

- WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standard.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Kanawha County/Charleston monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at the Charleston monitor, the State of West Virginia, in consultation with EPA Region III, will implement one or more of the following measures to assure continued attainment:

- Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded (e.g., waste water treatment facilities);
- Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets;
- NO_X RACT requirements;
- Regulations to establish plant-wide emissions caps (potentially with emissions trading provisions);
- Establish a Public Awareness/Ozone Action Day Program, a two pronged program focusing on increasing the public's understanding of air quality issues in the region and increasing support for actions to improve the air quality, resulting in reduced emissions on days when the ozone levels are likely to be high.
- Initiate one or more of the following voluntary local control measures:

(1) Bicycle and Pedestrian Measures—A series of measures designed to promote bicycling and walking including both promotional activities and enhancing the environment for these activities;

(2) Reduce Engine Idling—Voluntary programs to restrict heavy duty diesel engine idling times for both trucks and school buses;

(3) Voluntary Partnership with Ground Freight Industry—A voluntary program using incentives to encourage

the ground freight industry to reduce emissions;

(4) Increase Compliance with Open Burning Restrictions—Increase public awareness of the existing open burning restrictions and work with communities to increase compliance; and

(5) School Bus Engine Retrofit Program—Have existing school bus engines retrofitted to lower emissions.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing regulatory requirements.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Develop rule within 6 months of selection of measure;
- File rule with state secretary (process takes up to 42 days);
- Applicable regulation to be fully implemented 6 months after adoption.

The following schedule for adoption, implementation and compliance applies to the voluntary contingency measures.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Initiation of program development with local governments within the area by the start of the following ozone season.

(f) An Additional Provision of the Maintenance Plan—The State's maintenance plan for the Charleston area has an additional provision. That provision states that based on the 2002 inventory data and calculation methodology, it is expected that area and mobile source emissions would not exhibit substantial increases between consecutive periodic year inventories. Therefore, if significant unanticipated emissions growth occurs, it is expected that point sources would be the cause. West Virginia regulation 45CSR29 requires significant point source emitters in six counties, including Kanawha and Putnam, to submit annual emission statements which contain emission totals for VOCs and NO_X. Any significant increases that occur can be identified from these reports without waiting for a periodic inventory. This gives West Virginia the capability to identify needed regulations by source, source category and pollutant and to begin the rule promulgation process, if necessary, in an expeditious manner.

The maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by West Virginia for the Charleston area meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Charleston Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.* RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed ''on-road mobile source emissions budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A 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 the MVEBs in control strategy SIPs and maintenance plans.

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 or reasonable progress towards the national ambient air quality standards. 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 state implementation plan.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the state implementation plan as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Charleston area are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''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 attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Charleston area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for the Charleston area. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 49.6 tpd of VOC and 125 tpd of NO_X. The WVDEP projected emissions out to the year 2018 and projected a total of 45 tpd of VOC and 80.6 tpd of NO_X from all sources in the

Charleston area. The safety margin for the Charleston area for 2018 would be the difference between these amounts, or 4.6 tpd of VOC and 44.4 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE CHARLESTON AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	49.6	125
2009 Interim	46.7	102.3
2009 Safety Margin	2.9	22.7
2004 Attainment	49.6	125
2018 Final	45	80.6
2018 Safety Margin	4.6	44.4

The WVDEP allocated 3.3 tpd NO_X and 1.9 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the VADEQ allocated 1.4 tpd NO_X and 1.2 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Charleston area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE CHARLESTON AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	9.7	16.5
2009 Safety Margin Allocated to MVEBs	1.9	3.3
2009 MVEBs	11.6	19.8
2018 projected on-road mobile source projected emissions	6.0	6.8
2018 Safety Margin Allocated to MVEBs	1.2	1.4
2018 MVEBs	7.20	8.20

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2018 MVEBs for the Charleston area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Charleston Area Maintenance Plan?

The MVEBs for the Charleston area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Charleston MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Charleston area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Charleston area has attained the 8-hour ozone NAAQS. The EPA is also proposing to approve the State of West Virginia's November 30, 2005 request for the Charleston area to be designated to attainment of the 8-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Charleston area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for this area, submitted on November 30, 2005, as a revision to the West Virginia SIP. EPA is proposing to approve the maintenance plan for the area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by West Virginia for the area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule proposing to approve the redesignation of the SNP area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule proposing to approve the redesignation of the Charleston area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

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

Dated: April 24, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–6754 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–849; MM Docket No. 01–154; RM–10163]

Radio Broadcasting Services; Goldthwaite, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses an Application for Review filed by Charles Crawford directed to the *Report and Order* in this proceeding. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01–154, adopted April 12, 2006, and released April 14, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule published at 66 FR 38410, July 24, 2001 is withdrawn.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–4120 Filed 5–3–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT93

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alameda Whipsnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis identifies potential costs of approximately $532 million over a 20-year period, or approximately $47 million per year, as a result of the proposed designation of critical habitat, including those costs coextensive with listing. If this cost is annualized (adjusted for inflation and value over the time period to equate to an annual cost) over the 20 year period, the potential costs are predicted to be approximately $47 million per year. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until June 5, 2006.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address.

3. You may fax your comments to 916/414–6712; or

4. You may send comments by electronic mail (e-mail) to: *alameda_whipsnake@fws.gov*, or to the Federal eRulemaking Portal at *http://www.regulations.gov*. For directions on how to file comments electronically, see the ''Public Comments Solicited'' section. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods mentioned above.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://www.fws.gov/sacramento* or from the Sacramento Fish and Wildlife Office at the address and contact numbers above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (70 FR 60608; October 18, 2005) and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of including such area as part of critical habitat;

(2) Specific information on the amount and distribution of Alameda whipsnake, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Information on whether, and, if so, how many of, the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the Alameda whipsnake, and how many were either already in place or enacted for other reasons;

(5) Information on whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(8) Information on areas that could potentially be disproportionately impacted by an Alameda whipsnake critical habitat designation. The draft economic analysis indicates potentially disproportionate impacts to areas within Contra Costa, Alameda, San Joaquin, and Santa Clara counties. Based on this information, we are considering excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act;

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(11) Information on whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period on the October 18, 2005, proposed rule (70 FR 60608) need

not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. On the basis of public comment on this analysis, the critical habitat proposal, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AT93'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office at the address listed under **ADDRESSES**.

Copies of the proposed rule and draft economic analysis are available on the Internet at: *http://www.fws.gov/sacramento/*. You may also obtain copies of the proposed rule and economic analysis from the Sacramento Fish and Wildlife Office (see **ADDRESSES**), or by calling 916/414–6600.

Background

We published a proposed rule to designate critical habitat for the Alameda whipsnake on October 18, 2005 (70 FR 60608). The proposed critical habitat totaled approximately 203,342 acres (ac) (82,289 hectares (ha)) in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. Per settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for the Alameda whipsnake on or before October 1, 2006.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the October 18, 2005, proposed rule to designate critical habitat for the Alameda whipsnake (70 FR 60608), we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately $532 million over a 20-year period, or approximately $47 million per year, as a result of the proposed critical habitat designation, including those costs coextensive with listing. If this cost is annualized (adjusted for inflation and value over the time period to equate to an annual cost) over the 20 year period, the potential costs are predicted to be approximately $47 million per year. The analysis measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and Federal lands.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Alameda whipsnake, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Alameda whipsnake in essential habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date the species was listed as a threatened species (December 5, 1997; 62 FR 64306) and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed Alameda whipsnake

critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $532 million from 2006 to 2026. Overall, the residential and commercial industry is anticipated to experience the highest estimated costs. The draft analysis was conducted at the census tract level. Of the 49 census tracts that are part of this current proposal, 17 are identified as census tracts responsible for over 80 percent of the most economically impacted areas. Annualized impacts of costs attributable to the proposed critical habitat designation are projected to be approximately $47 million.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Alameda whipsnake would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Alameda whipsnake and proposed designation of its critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. We estimated the number of affected small businesses and calculated the number of houses built per small firm. It appears that the annual number of affected small firms would be fewer than four in the affected counties. Note that if one firm closed in the first year, then this same firm would be affected in subsequent years. The number of small firms will not decrease every year. These firms may be affected by activities associated with the conservation of the Alameda whipsnake, inclusive of activities associated with listing, recovery, and critical habitat. In the development of our final designation, we will explore potential alternatives to minimize impacts to any affected small business entities. These alternatives may include the exclusion of all or portions of critical habitat units in areas where the number of small businesses are disproportionately affected. However, we are seeking comment on potentially excluding areas from the final critical habitat designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in the affected areas.

Critical habitat designation for the Alameda whipsnake is expected to have the largest impacts on the market for developable land. The proposed critical habitat designation for Alameda whipsnake occurs in a number of

rapidly growing areas. Regulatory requirements to avoid on-site impacts and mitigate off-site affect the welfare of both producers and consumers. In the scenario presented here, mitigation requirements increase the cost of development, and avoidance requirements are assumed to reduce the construction of new housing. In this scenario, the proposed critical habitat designation is expected to impose losses of over $532 million over the 20-year study period.

The economic impacts of the proposed critical habitat designation vary widely even with the county. That is, the impacts of designation are frequently localized. This finding is sensible from an economic point of view and is consistent with the teachings of urban economics. Housing prices vary over urban areas, typically declining as the location of the house becomes more remote. Critical habitat is not evenly distributed across the landscape, and large impacts may result if a particular area has a large fraction of developable land in critical habitat. Some areas have few alternate sites for development, or have highly rationed housing resulting in high prices. Any of these factors may cause the cost of critical habitat designation to increase.

The precise spatial scale of the analysis permits identification of specific locations, or parts of individual critical habitat units, that result in the largest economic impacts. The maps contained at the end of the draft economic analysis are instructive in this regard. The maps identify the census tracts within the counties where the impacts are predicted to occur.

Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Alameda whipsnake, the impacts on nonprofits and small governments are expected to be small. There is no record of consultations between the Service and any of these governments since the Alameda whipsnake was listed as threatened on December 5, 1997 (62 FR 64306). It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Alameda whipsnake within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the Alameda whipsnake will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Alameda whipsnake. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Alameda whipsnake does not pose significant takings implications.

Author

The primary author of this notice is the staff of the Sacramento Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 26, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–6720 Filed 5–3–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rota Bridled White-eye (*Zosterops rotensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for the Rota bridled white-eye (*Zosterops rotensis*) and the availability of the draft economic analysis. The draft economic analysis estimates the potential total costs for this critical habitat designation to range from $806,000 to $4,465,000, at present value over a 20-year period, or $76,000 to $421,000 per year, assuming a 7 percent discount rate. We are reopening the comment period to allow peer reviewers and all interested parties the opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until June 5, 2006.

ADDRESSES: You may submit your comments and information by any one of several methods:

(1) You may submit written comments and information by mail to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may hand-deliver written comments to our Pacific Islands Fish and Wildlife Office at the address given above.

(3) You may fax your comments to 808–792–9581.

(4) You may send comments by electronic mail (e-mail) to *RBWE_CritHab@fws.gov.* For directions on how to submit e-mail comments, see the Public Comments Solicited section.

(5) You may submit comments via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808–792–9400; facsimile: 808–792–9581).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on September 14, 2005 (70 FR 54335), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Rota bridled white-eye habitat, and what features are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) The extent to which the description in the draft economic analysis of economic impacts to public land management, agricultural homestead development, and private development and tourism activities is complete and accurate; and

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in section 1.2.3.3 of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether the Island-wide Habitat Conservation Plan (HCP) or the Rota Bridled White-eye HCP should be considered for inclusion or exclusion from the final critical habitat designation.

If you wish to submit comments electronically, please submit them in an ASCII format and avoid the use of special characters and any form of encryption. Please include ''Attn: RIN 1018–AU32'' in the subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Pacific Islands Fish and Wildlife Office at 808–792–9400. Please note that the e-mail address *RBWE_CritHab@fws.gov* will be closed at the termination of the public comment period. If our e-mail connection is not functioning, please submit comments by one of the alternate methods listed in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address or both, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). Copies of the proposed critical habitat rule for the Rota bridled white-eye and the draft economic analysis are available

on the Internet at *http://www.fws.gov/pacificislands* or by request to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section).

Background

We published the final rule to list the Rota bridled white-eye as endangered in the **Federal Register** on January 22, 2004 (69 FR 3022). At the time of listing, we concluded that designating critical habitat for the Rota bridled white-eye was prudent and that we would publish a proposed rule in accordance with other priority listing actions when funding became available. On May 20, 2004, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity challenging our failure to propose critical habitat for the Rota bridled white-eye. On September 14, 2004, a stipulated settlement agreement was filed in the U.S. District Court for Hawaii (*Center for Biological Diversity* v. *Norton*, Case No. C–04–00326 SPK LEK) stating that the Service will submit for publication in the **Federal Register** a proposed critical habitat designation for the Rota bridled white-eye no later than September 7, 2005, and a final critical habitat designation no later than September 7, 2006. On September 14, 2005, we published a proposed rule to designate approximately 3,958 acres (1,602 hectares) in one unit as critical habitat for the Rota bridled white-eye on the island of Rota, Commonwealth of the Northern Mariana Islands (CNMI) (70 FR 54335). The public comment period was open for 60 days until November 14, 2005.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is now available on the Internet and from our office (see Public Comments Solicited section).

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs as a result of the proposed critical habitat designation, including those costs coextensive with listing. The analysis measures (in the case of the Rota bridled white-eye) lost economic efficiency associated with public land management (including subsistence farming, public access improvements to historic sites, Endangered Species Act studies, proposed island-wide HCP), agricultural homestead development, and private development and tourism activities. When evaluating agricultural homestead development activities, three different alternatives were identified: (1) An island-wide HCP is developed, with development of agricultural homesteads; (2) an HCP is developed only for the area of agricultural homesteads in Rota bridled white-eye habitat; and (3) no HCP is developed, and development of agricultural homesteads in Rota bridled white-eye habitat is avoided.

Costs related to conservation activities for the proposed Rota bridled white-eye critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $806,000 to $4,465,000 from 2006 to 2026. The CNMI government is anticipated to experience the high end estimate if, under the agricultural homestead development activities, the land is not developed because it is designated as critical habitat. Annualized impacts of costs attributable to the proposed critical habitat designation are projected to be approximately $76,000 to $421,000.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, and then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we

considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Rota bridled white-eye would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (for example, agricultural homestead development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small entities resulting from the protection of the Rota bridled white-eye and its habitat related to the listing of the species and the proposed designation of its critical habitat. Two entities, the Rota municipal government and the CNMI government, were identified as entities that could be affected by the proposed rule. The Rota municipal government was identified as a small entity with 3,283 constituents. However, we estimated that the impacts of protecting the Rota bridled white-eye and its habitat are anticipated to be borne only by the CNMI government, which generally undertakes land management in the CNMI and includes both the Department of Land and Natural Resources and Mariana Public Land Authority. The CNMI government has 69,221 constituents and is not considered a small entity. Therefore, we do not believe that the designation of critical habitat for the Rota bridled white-eye will result in a disproportionate effect to small business entities. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) The rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5) through (7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that the proposed designation will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for Rota bridled white-eye. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for Rota bridled white-eye does not pose significant takings implications.

Author(s)

The primary author of this notice is Fred Amidon of the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 26, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–6719 Filed 5–3–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 86

Thursday, May 4, 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

Forest Service

Newspapers Used for Publication of Legal Notices in the Southwestern Region, Which Includes Arizona, New Mexico, and Parts of Oklahoma and Texas

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to give legal notice for the availability for comments on projects under 36 CFR part 215, notice of decisions that may be subject to administrative appeal under 36 CFR part 215 or part 217, and for the opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR 218.4. Newspaper publication of notices of opportunities to comment, to appeal decisions, or to file objections, is in addition to mailings and direct notice made to those who have participated in the project planning by submitting comments and/or requesting notice.

DATES: Use of these newspapers for the purpose of publishing legal notice for comment and decision that may be subject to appeal under 36 CFR part 215 and 217 and for opportunity to object under 36 CFR part 218 shall begin on the date of this publication and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Assistant, 333 Broadway SE, Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Connie Smith, 505–842–3223.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 or part 217, or give opportunity to object under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record of which publication date shall be used for calculating the time period to file comment, appeal or an objection.

Southwestern Regional Office

Regional Forester

Notices of Availability for Comment and Decisions and Objections affecting New Mexico Forests: *Albuquerque Journal*, Albuquerque, New Mexico, for National Forest System Lands in the State of New Mexico and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting Arizona Forests: *The Arizona Republic*, Phoenix, Arizona, for National Forest System Lands in the State of Arizona and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows: Kiowa National Grassland notices published in: *Union County Leader*, Clayton New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma notices published in: *Boise City News*, Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas notices published in: *The Dalhart Texan*, Dalhart, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma notices published in: *Cheyenne Star*, Cheyenne, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas notices published in: *The Canadian Record*, Canadian, Texas. McClellan Creek National Grassland in Gray County, Texas notices published in: *The Pampa News*, Pampa, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Alpine Ranger District, Black Mesa Ranger District, Lakeside Ranger District, and Springerville Ranger District are published in: *The White Mountain Independent,* Show Low and Navajo County, Arizona.

Clifton Ranger District Notices are published in: *Copper Era,* Clifton, Arizona.

Coconino National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Mogollon Rim Ranger District, Mormon Lake Ranger District, and Peaks Ranger District are published in: *Arizona Daily Sun,* Flagstaff, Arizona.

Red Rock Ranger District Notices are published in: *Red Rock News,* Sedona, Arizona.

Coronado National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Santa Catalina Ranger District are published in: *The Arizona Daily Star,* Tucson, Arizona.

Douglas Ranger District Notices are published in: *Daily Dispatch,* Douglas, Arizona.

Nogales Ranger District Notices are published in: *Nogales International,* Nogales, Arizona.

Sierra Vista Ranger District Notices are published in: *Sierra Vista Herald,* Sierra Vista, Arizona.

Safford Ranger District Notices are published in: *Eastern Arizona Courier,* Safford, Arizona.

Kaibab National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, North Kaibob Ranger District, Tusayan Ranger District, and Williams Ranger District, Notices are published in: *Arizona Daily Sun,* Flagstaff, Arizona.

Prescott National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Bradshaw Ranger District, Chino Valley Ranger District and Verde Ranger District are published in: *Prescott Courier,* Prescott, Arizona.

Tonto National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor are published in: *East Valley Tribune* and *Scottsdale Tribune,* Mesa, Arizona.

Cave Creek Ranger District Notices are published in: *Scottsdale Tribune,* in Mesa, Arizona.

Globe Ranger District Notices are published in: *Arizona Silver Belt,* Globe, Arizona.

Mesa Ranger District Notices are published in: *East Valley Tribune,* Mesa, Arizona.

Payson Ranger District, Pleasant Valley Ranger District and Tonto Basin Ranger District Notices are published in: *Payson Roundup,* Payson, Arizona.

New Mexico National Forests

Carson National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Camino Real Ranger District, Tres Piedras Ranger District and Questa Ranger District are published in: *The Taos News*, Taos, New Mexico.

Canjilon Ranger District and El Rito Ranger District Notices are published in: *Rio Grande Sun*, Espanola, New Mexico.

Jicarilla Ranger District Notices are published in: *Farmington Daily Times*, Farmington, New Mexico.

Cibola National Forest and National Grasslands

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in: *Albuquerque Journal*, Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico published in: *Union County Leader*, Clayton, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma published in: *Boise City News*, Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas published in: *The Dalhart Texan*, Dalhart, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma published in: *Cheyenne Star*, Cheyenne, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas published in: *The Canadian Record*, Canadian, Texas. McClellan Creek National Grassland published in: *The Pampa News*, Pampa, Texas.

Mt. Taylor Ranger District Notices are published in: *Cibola County Beacon*, Grants, New Mexico.

Magdalena Ranger District Notices are published in: *Defensor-Chieftain*, Socorro, New Mexico.

Mountainair Ranger District Notices are published in: *Mountainview Telegraph*, Tijeras, New Mexico.

Sandia Ranger District Notices are published in: *Albuquerque Journal*, Albuquerque, New Mexico.

Kiowa National Grassland Notices are published in: *Union County Leader*, Clayton, New Mexico.

Rita Blanca National Grassland Notices in Cimarron County, Oklahoma are published in: *Boise City News*, Boise City, Oklahoma while Rita Blanca National Grassland Notices in Dallam County, Texas are published in: *Dalhart Texan*, Dalhart, Texas.

Black Kettle National Grassland Notices in Roger Mills County, Oklahoma are published in: *Cheyenne Star*, Cheyenne, Oklahoma, while Black Kettle National Grassland Notices in Hemphill County, Texas are published in: *The Canadian Record*, Canadian, Texas.

McClellan Creek National Grassland Notices are published in: *The Pampa News*, Pampa, Texas.

Gila National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Quemado Ranger District, Reserve Ranger District, Glenwood Ranger District, Silver City Ranger District and Wilderness Ranger District are published in: *Silver City Daily Press*, Silver City, New Mexico.

Black Range Ranger District Notice are published in: *The Herald,* Truth or Consequences, New Mexico.

Lincoln National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Sacramento Ranger District are published in: *Alamogordo Daily News,* Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in: *Carlsbad Current Argus,* Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in: *Ruidoso News,* Ruidoso, New Mexico.

Santa Fe National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Coyote Ranger District, Cuba Ranger District, Espanola Ranger District, Jemez Ranger District and Pecos-Las Vegas Ranger District are published in: *Albuquerque Journal,* Albuquerque, New Mexico.

Dated: April 20, 2006.

Abel Camarena,

Deputy Regional Forester, Southwestern Region.

[FR Doc. 06–4194 Filed 5–3–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels; Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; correction.

SUMMARY: USDA Rural Development administers rural utilities service through the Rural Utilities Service. USDA Rural Development published a document in the **Federal Register** of March 16, 2006, concerning solicitation of applications for its Public Television Digital Transition Grant Program application window for fiscal year (FY) 2006. The document contained incorrect criteria scoring information.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Advanced Services Division, Telecommunications, USDA Rural Development, U.S. Department of Agriculture, telephone: (202) 690–4493, fax: (202) 720–1051.

Correction

In the **Federal Register** of March 16, 2006, in FR Doc. E6–3780, on page 13578, in the third column, correct the ''V. Application Review Information, A. Criteria'' caption to read:

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in 7 CFR 1740.8. There are 100 points available, broken down as follows:

a. The Rurality of the Project (up to 50 points);

b. The Economic Need of the Project's Service Area (up to 25 points); and

c. The Critical Need for the Project, and of the applicant, including the benefits derived from the proposed service (up to 25 points).

Dated: April 26, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–6744 Filed 5–3–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–2006]

Foreign-Trade Zone 144—Brunswick, GA; Application For Foreign-Trade Subzone Status; E.I. du Pont de Nemours and Company, Inc. (Crop Protection Products); Valdosta, GA Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Brunswick Foreign-Trade Zone, Inc., grantee of FTZ 144, requesting special-purpose subzone status for the manufacturing facilities (crop protection products) of E.I. du Pont de Nemours and Company, Inc. (DuPont), located in the Valdosta, Georgia area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 27, 2006.

The facilities for which subzone status is proposed are located at three sites in the Valdosta, Georgia area (223.68 acres total; up to 516,253 sq. ft. of enclosed space): Site # 1 (220 acres; 156,253 sq. ft. of enclosed space with possibility of creation of additional 200,000 sq. ft.) located at 2509 Rocky Ford Road in Lowndes County, Georgia; Site # 2 (2.3 acres; 100,000 sq. ft. of enclosed space) located at 1560 Old Clyattsville Road in Valdosta; and Site # 3 (1.38 acres; 60,000 sq. ft. of enclosed space) located at 1653 and 1669 Clay Road in Valdosta.

DuPont is seeking subzone authority to manufacture, test, package and warehouse crop protection products. The company initially plans to manufacture certain fungicides (Manex), herbicides (Direx FP), plant growth regulators (CottonQuik), and insecticides (Avaunt/Steward) under FTZ procedures using imported ''technical'' ingredients. Duty rates on the finished products range from duty-free to 6.5% *ad valorem* while duty rates on the ingredients range from 3.7% to 6.5%. The application also requests authority to include a broad range of inputs, primarily categorized as organic chemicals, for potential future use in manufacture of finished crop protection products. (New major activity in these inputs/products would require review by the FTZ Board.) Duty rates for the potential input-material categories range from duty-free to 7.2% *ad valorem* while the potential finished products have duty rates ranging from duty-free to 6.5%.

Zone procedures would exempt DuPont from Customs duty payments on foreign inputs used in export production. On its domestic shipments, DuPont could apply to foreign inputs lower duty rates that apply to the finished products, where applicable, and would also be able to defer duty payments. DuPont would be able to avoid duty on foreign inputs which become scrap/waste, estimated at less than one percent of imported inputs. The application also indicates that the company will derive savings from simplification and expediting of the company's import and export procedures and from transfer of foreign-status merchandise to other FTZs or subzones. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 3, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 18, 2006.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 325 John Knox Road, The Atrium Building, Suite 201, Tallahassee, FL 32303.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: April 27, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–6764 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804, A–559–801]

Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results

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

SUMMARY: On June 1, 2005, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on ball bearings from Japan and Singapore. See *Initiation of Five-year (Sunset) Reviews*, 70 FR 31423 (June 1, 2005). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of the interested parties, the Department conducted full (240-day) sunset reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(2)(i). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.'' Based on our analysis of the comments we received, we find that it is appropriate to report a more recently calculated margin to the International Trade Commission for certain respondents.

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Fred Aziz, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC, 20230; telephone: 202–482–4114 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on ball bearings from Japan and Singapore. See *Initiation of Five-year (''Sunset'') Reviews*, 70 FR 31423 (June 1, 2005). On December 28, 2005, the Department published the preliminary results of the full sunset reviews of the antidumping duty orders on ball bearings from Japan and Singapore. See *Ball Bearings and Parts Thereof From Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Preliminary Results*, 70 FR 76754 (December 28,

2005).[1] In our preliminary results, we found that revocation of the orders orders would likely lead to continuation or recurrence of dumping.

On January 27, 2006, the Department received case briefs from the following parties: *Japan* - Koyo Seiko Co., Ltd., and Koyo Corporation of USA (collectively, Koyo), NTN Corporation and American NTN Bearing Manufacture Corporation (collectively, NTN), and NSK Corp. and NSK Ltd. (collectively, NSK); *Singapore* - NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd. (collectively, NMB/Pelmec). On February 1, 2006, the Department received a rebuttal brief from the Timken Company, Pacamor Kubar Bearings, and RBC Bearings (collectively, the domestic interested parties).

Scope of the Order

The products covered by these orders are ball bearings and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings above are provided for convenience and customs purposes, written descriptions of the scopes of these orders remain dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated April 27, 2006 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping, the magnitude of the margins likely to prevail if the antidumping duty orders were revoked, and support of the domestic industry. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty orders on ball bearings from Japan and Singapore would be likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Japan.	
Koyo Seiko Co., Ltd.	12.78
Minebea Co., Ltd.	106.61
Nachi–Fujikoshi Corp.	48.69
NSK Ltd.	8.28
NTN Corp.	5.93
All Other Japanese Manufacturers/Exporters/Producers	45.83
Singapore.	
NMB/Pelmec	25.08
All Other Singaporean Manufacturers/Exporters/Producers	25.08

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–6763 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] For a full discussion of the history of these orders prior to the preliminary results of these sunset reviews, see the December 28, 2005, decision memorandum accompanying the preliminary results of sunset reviews.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of 2004–2005 Semi–Annual New Shipper Reviews

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

SUMMARY: In response to requests from Shandong Chengshun Farm Produce Trading Company, Ltd. (''Chengshun''), Shenzhen Fanhui Import and Export Co., Ltd. (''Fanhui''), Qufu Dongbao Import and Export Trade Co., Ltd. (''Dongbao''), and Anqiu Friend Food Co., Ltd. (''Anqiu Friend''), the U.S. Department of Commerce (''the Department'') is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''). The period of review (''POR'') is November 1, 2004, through April 30, 2005.

We preliminarily determine that none of these companies have made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We will issue the final results no later than 90 days from the date of publication of this notice.

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Jim Nunno or Ryan Douglas, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0783 and (202) 482–1277, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on fresh garlic from the PRC on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 28462. On May 17, 2005, we received timely requests for new shipper reviews from Chengshun) and Anqiu Friend. On May 26, 2005, we received a timely request for new shipper review from Xi'an XiongLi Foodstuff Co., Ltd. (''XiongLi''). On May 31, 2005, we received timely requests for new shipper reviews from Fanhui and Dongbao. Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d)(1), we initiated the following three new shipper reviews for shipments of fresh garlic from the PRC:

1) grown by Jinxiang Chengsen Agricultural Trade Company, Ltd. (''CATC'') and exported by Chengshun,
2) grown by Jinxiang Tianshan Foodstuff Co., Ltd. (''JTFC'') and exported by XiongLi, and
3) grown and exported by Fanhui.

On July 11, 2005, the Department published a notice of the initiation of the new shipper reviews of Chengshun, Fanhui, and XiongLi. *See Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews*, 70 FR 39733 (July 11, 2005).

In July 2005 we issued antidumping duty questionnaires to Chengshun, Fanhui, and XiongLi. Also in July 2005, we issued questionnaires to the importers of merchandise exported by Chengshun, Fanhui, and XiongLi. In August 2005, we received questionnaire responses from Chengshun, Fanhui, and XiongLi and from the importers of merchandise exported by Chengshun and Fanhui.

On August 9, 2005, the Department received a timely request from XiongLi to withdraw its request for this review. On September 7, 2005, the Department rescinded the new shipper review with respect to XiongLi. *See Fresh Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 70 FR 54358 (September 14, 2005). We also initiated two additional new shipper reviews for merchandise grown and exported by Dongbao and Anqiu Friend.

On October 3, 2005, the Department published a notice of the initiation of the new shipper review of Dongbao. *See Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 70 FR 57561 (October 3, 2005). On October 26, 2005, the Department published a notice of the initiation of the new shipper review of Anqiu Friend. *See Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 70 FR 61787 (October 26, 2005).

In October and November 2005, we issued antidumping duty questionnaires to Dongbao and Anqiu Friend, which included questionnaires to the importers of merchandise exported by Dongbao and Anqiu Friend. We received questionnaire responses from Dongbao in November 2005 and from Anqiu Friend in December 2005. The Department issued supplemental questionnaires to and received responses from all four respondents from November 2005 through March 2006.

On November 30, 2005, we extended the deadline for the issuance of the preliminary results of these new shipper reviews until April 26, 2006. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results of New Shipper Reviews*, 70 FR 72608 (December 6, 2005).

In March 2006, the Department conducted verifications of all four respondents. Also in March 2006, the Department amended the administrative protective orders in these new shipper reviews to allow parties to use business proprietary information in the record of the Chengshun and Fanhui new shipper reviews in making comments in either of the other two new shipper reviews (i.e., of Dongbao or Anqiu), and vice–versa.[1]

Period of Review

The POR is November 1, 2004, through April 30, 2005.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Non–market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources

[1] *See* Memorandum to the File titled, ''2004-2005 Semi-Annual New Shipper Reviews of Fresh Garlic from the People's Republic of China: Use of Business Proprietary Information in Parallel Segments,'' dated March 21, 2006.

of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum to the File titled, ''Factors Valuations for the Preliminary Results of the New Shipper Reviews,'' dated April 26, 2006 (''*Factor Valuation Memorandum*''), which is on file in the Central Records Unit (''CRU''), Room B–099 of the main Department building.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Memorandum to the File titled ''New Shipper Reviews of Fresh Garlic from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated January 9, 2006, which is on file in the CRU.

In addition to being among the countries comparable to the PRC in terms of economic development, India is a significant producer of the subject merchandise. Therefore, we have used India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. *See* Memorandum to the File titled, ''Semi–Annual New Shipper Reviews of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country,'' dated April 26, 2006, (''*Surrogate Country Memorandum*''), which is on file in the CRU. For a detailed discussion of these comments, *see Factor Valuation Memorandum*. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Separate Rates

The Department has treated the PRC as an NME country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

Chengshun, Fanhui, Dongbao and Anqiu Friend all provided the requested separate–rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996), we performed separate–rates analyses to determine whether each producer/exporter is independent from government control.

A. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the ''Foreign Trade Law of the People's Republic of China,'' the ''Company Law of the People's Republic of China,'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Chengshun reported that it is a limited liability company. Fanhui reported that it is a privately owned limited liability corporation. Dongbao reported that it is a privately owned company. Anqiu Friend reported that it is an independently managed limited liability company. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of Chengshun, Fanhui, Dongbao and Anqiu Friend do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently,

we preliminarily determine that Chengshun, Fanhui, Dongbao and Anqiu Friend have met the criteria for the application of a separate rate.

Export Price

For Chengshun, Fanhui, Dongbao, and Anqiu Friend, we based the U.S. price on export price (''EP''), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For Chengshun, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Chengshun did not incur any other shipping and handling expenses.

For Fanhui, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Fanhui reported that all shipments were FOB Qingdao and all other shipping and handling expenses were paid by the U.S. customer.

For Dongbao, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Dongbao reported that all shipments were FOB China port and all other shipping and handling expenses were paid by the U.S. customer.

For Anqiu Friend, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Anqiu Friend did not incur any other shipping and handling expenses.

As all foreign inland freight and foreign brokerage and handling expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factor Valuations'' section below for further discussion). See *Factor Valuation Memorandum*. For a more detailed explanation of the company–specific adjustments that we made in the calculation of the dumping margins for these preliminary results, *see* the company–specific preliminary results analysis memoranda, dated April 26, 2006, on file in the CRU.[2]

Normal Value

1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. *See, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying *Issues and Decision Memorandum* at Comment 3 (''*Fish Fillets Final*'').

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002), and *Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001). *See also Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 498, 449 (January 31, 2003); and *Fish Fillets Final*.

For the final results of the most recently completed (10th) administrative review,[3] the Department applied an intermediate–product valuation methodology to all companies in order to eliminate the distortions in our calculation of NV. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (*i.e.*, the ''intermediate product''), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic.[4]

In the course of these new shipper reviews, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons outlined in the Memorandum to the File titled,''2004–2005 Semi–Annual New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Intermediate Input Methodology,'' dated April 26, 2006 (''*NSR Intermediate Product Memorandum*''), we believe that the respondents are unable to accurately record and substantiate the complete costs of growing garlic.

Specifically, evidence on the record indicates that the respondents' records

[2] See Memorandum to the File titled, ''Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Shandong Chengshun Farm Produce Trading Company, Ltd.,'' dated April 26, 2006, Memorandum to the File titled, ''Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Shenzhen Fanhui Import and Export Co., Ltd.,'' dated April 26, 2006, Memorandum to the File titled, ''Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Qufu Dongbao Import and Export Trade Co., Ltd.,'' dated April 26, 2006, and Memorandum to the File titled, ''Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Anqiu Friend Food Co., Ltd.,'' dated April 26, 2006.

[3] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, signed April 26, 2006 (publication forthcoming) and accompanying Issues and Decisions Memorandum at Comment 1 (''*Garlic 10th Final Results*'').

[4] For a complete explanation of the Department's analysis, and for a more detailed analysis of the issues with respect to each respondent, *see Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69950 (November 18, 2005) (''*Garlic 10th Preliminary Results*''), and accompanying Memorandum to the File titled, ''2003-2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology,'' dated November 10, 2005.

are deficient in recording reported labor usage. The processes required for growing, harvesting, and processing fresh garlic in the PRC are very labor–intensive. From planting, tending (*e.g.*, taking care of plants), maintenance, harvesting, transporting from one area to another, to processing into subject merchandise, PRC garlic producers rely on a sizeable workforce, which incurs many man-hours to carry out these activities. In order to address several concerns which were raised during the course of previous administrative reviews with respect to the companies' reported growing- and harvesting–related labor FOPs, the Department issued supplemental questionnaires to all four respondents in these new shipper reviews. Also, in March 2006, the Department conducted verification of all four respondents.[5] Based on the responses to these questionnaires, and on the information gathered during verification, we conclude that, in general, the respondents in this industry do not track actual labor hours incurred for these activities and, thus, do not maintain appropriate records which would allow them to quantify, report and substantiate this information. For further discussion, *see NSR Intermediate Product Memorandum* and *Verification Reports*.

Further, we found that the respondents also differed in the means and specificity with which each reported its garlic seed usage. For example, although all four respondents purchased all of the seed required for planting, it appears that one of the respondents reported to the Department the amount of seed actually planted (*i.e.*, net), whereas the remaining three respondents used the gross weight of the seeds when purchased. Accordingly, consistent with our findings in the *10th AR Final Results*, we have determined that NV is understated because the respondent incurred a cost for the gross amount of seed purchased for planting that is not accounted for in the FOP reported for seed consumption. For further discussion, *see NSR Intermediate Product Memorandum*.

The Department conducts verification in administrative and new shipper reviews to confirm the accuracy of the data reported by the respondents to the Department in a proceeding. As part of verification in cases involving NMEs, the Department must be able to reconcile the data submitted in the questionnaire responses to the respondent's books and records, and, observe on–site production activities during verification. When the respondent's books and records do not contain a level of detail sufficient to substantiate the information required to report accurate FOP data, there is, in essence, no document trail through which the Department can conduct such a verification. We find that the PRC garlic industry has adopted and accepted a practice of maintaining either very basic records of its farms' growing and harvesting activities or, as detailed in the *NSR Intermediate Product Memorandum*, no records at all. This record–keeping is sufficient for farmers in the PRC garlic industry to successfully grow and harvest garlic. However, the combination of lack of detailed records, unclear schedules, and the multi–staged production process occurring over several months as it relates to planting, tending, and harvesting activities significantly inhibits the Department's ability to conduct a meaningful verification of reported information.

Finally, we also noted that there are many unknown variables that may affect or influence reported FOPs which are not accounted for in the respondents' books and records. The respondents' ability to measure and report accurate FOPs to the Department is greatly diminished by the fact that they lease the land on which the garlic is grown. Respondents in these reviews typically lease the land used for growing garlic for a period of nine months (*i.e.*, the garlic growing season). The remaining three months are referred to as the ''off–season.'' None of the respondents have reported detailed knowledge of either the off–season crops produced on such leased land, crops produced on this leased land concurrently with the garlic, or the impact that residual inputs (*e.g.*, nutrients, pesticide, herbicide, water) may have on their garlic crops. For further discussion, *see NSR Intermediate Product Memorandum*.

Accordingly, the Department has determined that the books and records maintained by the respondents do not report or account for all of the relevant information and do not allow the respondents to identify all of the FOPs necessary to grow and harvest garlic. *See NSR Intermediate Product Memorandum*. Further, the respondents' books and records (*e.g.*, inventory ledgers) do not allow us or the respondents themselves to derive accurate factor usage rates, which are necessary to the NME calculation methodology for NV. In addition, actual farms operated by each respondent are difficult to identify and locate as the respondents cannot provide detailed maps clearly marking the territories of their farms. Thus, the only way to derive complete and precise FOP data, without sufficiently detailed records, is for the Department to physically measure and observe each of these various production activities as they occur, as part of verification. As this would require the Department to be present throughout every stage of planting, tending, and harvesting for each respondent, the calculation (and verification) of accurate and complete FOPs is a virtual impossibility. Given that garlic is grown and harvested in one production cycle over a nine-month period, the Department can only verify the one growing/harvesting activity that is occurring at a particular point in the growing season.

Thus, in these reviews, for all of the reasons identified above and described in the *NSR Intermediate Product Memorandum*, we applied an intermediate input methodology to all companies for these preliminary results of review. This is consistent with our findings in the 10th administrative review.[6] For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, *see NSR Intermediate Product Memorandum*.

In future reviews, should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV. For further details, *see NSR Intermediate Product Memorandum*.

[5] *See* Memorandum to the File titled, ''Verification of Sales and Factors Response of Shandong Chengshun Farm Produce Trading Company, Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China,'' dated April 26, 2006 (''Chengshun Verification Report''), Memorandum to the File titled, ''Verification of Sales and Factors Response of Shenzhen Fanhui Import and Export Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China,'' dated April 26, 2006 (''Fanhui Verification Report''), Memorandum to the File titled, ''Verification of Sales and Factors Response of Qufu Dongbao Import and Export Trade Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China,'' dated April 25, 2006 (''Dongbao Verification Report''), and Memorandum to the File titled, ''Verification of Sales and Factors Response of Anqiu Friend Food Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China,'' dated April 25, 2006 (''Anqiu Verification Report'') (collectively ''*Verification Reports*''), on file in the CRU.

[6] *See Garlic 10th Final Results* at Comment 1.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sale(s) as certified by the U.S. Federal Reserve Bank. For a detailed description of all the surrogate values we used, *see* the *Factor Valuation Memorandum*.

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. Surrogate–value data or sources to obtain such data were obtained from the petitioners, the respondents, and the Department's research.

Except as specified below, we valued the intermediate and processing inputs using the weighted–average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values, contemporaneous with the POR, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1). *See also Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–46 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the NV. *See Notice of Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China (''PRC'')*, 67 FR 11670 (March 15, 2002).

Garlic Bulb: To value the garlic bulb we used garlic values sourced from the Agricultural Marketing Information Network (''Agmarknet'') website because we have found it is the best publicly available source to value the garlic bulb for the preliminary results. We obtained and used this information in the concurrent administrative review in order to value the garlic bulb.[7] This database contains daily wholesale prices from markets throughout India and has information on variety, minimum price, maximum price, and arrivals (quantities). Specifically, we find that the weighted average subset of the Agmarknet data which reflect values for Indian domestic garlic identified as ''China'' variety to be the best available information to value the intermediate product. *See Factor Valuation Memorandum* for a more complete discussion of the Department's analysis.

In addition, if a respondent reported that it, or its grower, purchased the garlic from an unaffiliated supplier prior to processing, we included a freight cost from the garlic bulb supplier to the company's processing facility. We did not include a freight cost for the garlic bulb if the respondent, or its grower, grew and processed its own garlic. For further details, *see Factor Valuation Memorandum*.

Energy and Water: To value electricity and diesel, we used values from the International Energy Agency to calculate a surrogate value for each in India for 2000, and adjusted for inflation. To value water, we used the rates from the website maintained by the Maharastra Industrial Development Corporation (*http://www.midcindia.org/*), which shows industrial water rates from various areas within the Maharastra Province, India (''Maharastra Data''). The Department determined in the 2002–2003 administrative review that agrarian water rates for irrigation are highly subsidized by the Indian government and, therefore, it is appropriate to use Indian industrial rates as a surrogate value for water in the PRC.[8] Furthermore, the Maharastra data is publicly available.

Packing: The respondents reported packing inputs consisting of plastic nets/mesh bags, paper cartons, plastic packing bands. All of these inputs were valued using import data from the *World Trade Atlas* that covered the POR, with the exception of paper cartons purchased by Fanhui, which sourced this input from market economies and paid for it in a market–economy currency. Therefore, for Fanhui, we have used its market–economy purchase price in our calculations.

Labor: We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's website at *http://www.ia.ita.doc.gov*. The source of this wage rate data on Import Administration's web site is the Yearbook of Labour Statistics 2003, International Labor Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (*http://laborsta.ilo.org*). The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See id*.

Land Value and Cold Storage: We find that, based on the use of intermediate product, the market value of the intermediate product (*i.e.*, the garlic bulb) already accounts for the cost of leasing the land used to grow garlic as well as any cold storage costs incurred prior to processing. Therefore, we did not value land or cold storage for these preliminary results of review because doing so might result in double counting of these costs.[9]

By–product: The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that because the market value of the intermediate product (*i.e.*, the garlic bulb) already accounts for the experience of the grower's sale of any by–product produced while growing garlic, we have not made a by–product offset amount from NV. *See Garlic 10th Preliminary Results*, 70 FR at 69950 (unchanged in the final results; *see Garlic 10th Final Results* at Comment 5).

Movement Expenses: We valued the truck rate based on an average of truck

[7] *See Garlic 10th Final Results* at Comment 2.

[8] *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying *Issues and Decision Memorandum* at Comment 3.

[9] *See Garlic 10th Preliminary Results*, 70 FR at 69950 (*unchanged in the Garlic 10th Final Results*).

rates that were published in the Indian publication *Chemical Weekly* during the POR. We valued foreign brokerage and handling charges based on an average value calculated in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products From India*, 66 FR 50406 (October 3, 2001), and *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006). We adjusted data not contemporaneous with the POR when appropriate.

Financial Expenses: As discussed in the *Factor Valuation Memorandum*, Dongbao submitted the publicly available financial information of one company. The petitioners did not submit any financial statements for these preliminary results. Because we are using an intermediate methodology for all respondents in these reviews, it is important to use financial ratios derived from a surrogate company whose financial expenses do not include upstream costs (*i.e.*, growing costs) to avoid double–counting factory overhead, selling, general and administrative expenses, and profit. We preliminarily conclude that the financial information of Preethi Tea Industry Private Limited (''Preethi'') and Limtex India Limited (''Limtex''), tea producers in India, are most representative of the financial experiences of the respondent companies because they process an intermediate product prior to its sale.

Thus, to value factory overhead, and selling, general and administrative expenses, we used rates based on data taken from the 2003/2004 financial statements of Preethi and the 2003/2004 and 2004/2005 financial statements of Limtex for these preliminary results. Preethi's 2003/2004 financial statement did not report a profit. Therefore, for purposes of these preliminary results we excluded the profit ratio that was reported on its 2003/2004 financial statement. *See Factor Valuation Memorandum* for a more complete discussion of the Department's analysis.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period November 1, 2004, through April 30, 2005:

Exporter	Grower	Margin (percent)
Shandong Chengshun Farm Produce Trading Company, Ltd.	Jinxiang Chengsen Agricultural Trade Company, Ltd.	0.00
Shenzhen Fanhui Import and Export Co., Ltd.	Shenzhen Fanhui Import and Export Co., Ltd.	0.00
Qufu Dongbao Import and Export Trade Co., Ltd.	Qufu Dongbao Import and Export Trade Co., Ltd.	0.00
Anqiu Friend Food Co., Ltd.	Anqiu Friend Food Co., Ltd.	0.00

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days of publication of these preliminary results, in accordance with 19 CFR 351.224(i)(1), unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of these new shipper reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer), specific assessment rate or value for merchandise subject to these reviews. For these preliminary results we divided the total dumping margins for the reviewed sales by the total entered quantity of those reviewed sales for each applicable importer. In these reviews, we will direct CBP to assess importer (or customer) specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments of fresh garlic from the PRC grown by CATC and exported by Chengshun, grown and exported by Fanhui, grown and exported by Dongbao, and grown and exported by Anqiu Friend that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Chengshun, Fanhui, Dongbao, and Anqiu Friend entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise grown by CATC and exported by Chengshun, grown and exported by Fanhui, grown and exported by Dongbao, or grown and exported by Anqiu Friend, the cash deposit rate will be that stipulated in the final results of review, except, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*, *i.e.*, less than 0.5 percent; (2) for subject merchandise exported by Chengshun but not grown by CATC, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Fanhui, Dongbao, or Anqiu Friend, but grown by any other party, the cash deposit rate will be the PRC–wide rate. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: April 26, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–6757 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews

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

SUMMARY: On November 18, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review and the preliminary results of the new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2003, through October 31, 2004. The administrative review covers twenty–one exporters, and the new shipper reviews cover two exporters.

We invited interested parties to comment on our preliminary results. We specifically invited comments on surrogate country selection for water valuation; however, no parties submitted comments on this issue.[1] Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for these reviews are listed in the ''Final Results of the Reviews'' section below.

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Katharine Huang or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 and (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2005, the Department published the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. *See Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942 (November 18, 2005) (''*Preliminary Results*''). On December 19, 2005, Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. (''FHTK'') submitted comments on minor errors contained in the Department's preliminary margin calculation for FHTK. In December 2005, we extended the deadline by which interested parties may submit publicly available information to value factors of production to January 5, 2006. Also in December 2005, we postponed the briefing schedule until January 2006 and notified interested parties.

On January 5, 2006, we received surrogate value submissions from the petitioners[2] and five respondents.[3] On January 17, 2006, we received additional surrogate value information from the petitioners in rebuttal to the January 5, 2006, submissions from respondents. We also received submissions from seven respondents[4] in rebuttal to the January 5, 2006, submission from the petitioners. On January 23, 2006, we received a case brief from the petitioners and their request for a public hearing. We also received case briefs from Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, Weifang Shennong Foodstuff Co., Ltd. (''WSFC''), Jining Trans–High Trading Co., Ltd. (''Trans–High''), Shanghai LJ International Trading Company (''Shanghai LJ''), and Jinxiang Dong Yun Freezing Storage Co., Ltd. (''Dong Yun''). On January 30, 2006, we received rebuttal submissions from the petitioners, Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, Trans–High, Shanghai LJ, Dong Yun, and Taian Ziyang Food Co., Ltd. (''Ziyang''). No comments were submitted by Huaiyang Hongda Dehydrated Vegetable Company (''Hongda'') or Zhangqiu Qingyuan Vegetable Co., Ltd. (''Qingyuan'').

On February 14, 2006, the petitioners submitted a letter withdrawing their request for a hearing. As there were no other requests for a hearing, the Department did not conduct a hearing in these reviews.

On February 14, 2006, we evaluated Trans–High's comments in its case briefs with regard to the copying error in the verification report and identified that Trans–High had based its comments on a draft of the report released for bracketing of business proprietary information, rather than on the official version of the verification report released to the parties. Pursuant to its relevant comments in its case brief, the Department discovered that Trans–High had not picked up the official version of the report from the Department's Central Records Unit (''CRU''). In response to Trans–High's omission, we re–released the official version of the verification report to Trans–High and allowed it one week to submit any comments relevant to the official version. *See* Letter from Blanche Ziv to Francis Sailer, dated February 14, 2006. Trans–High did not submit any comments in response to this opportunity. *See* Memorandum from Jennifer Moats to the File entitled, ''No Comments on Official Version of Trans–High Verification Report,'' dated March 9, 2006.

On March 1, 2006, we issued a letter to all interested parties requesting comments on a change in our allocation of certain labor items from direct labor to manufacturing overhead in the calculation of the surrogate financial ratios. We received comments on our allocation methodology from Linshu Dading, Sunny, Harmoni, Shanyang, and Jinan Yipin on March 10, 2006.

On March 16, 2006, we extended the time limit for the completion of the final results of these reviews, including our analysis of issues raised in case or rebuttal briefs until April 17, 2006. *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New*

[1] The Department determined in the 2002-2003 administrative review that agrarian water rates for irrigation are highly subsidized by the Indian government and, therefore, it is appropriate to use an Indian industrial rate as a surrogate value for water in the PRC.

[2] The Fresh Garlic Producers Association (''FGPA'') and its individual members. The individual members are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[3] The five respondents are Linshu Dading Private Agricultural Products Co., Ltd. (''Linshu Dading''), Sunny Import and Export Ltd. (''Sunny''), Zhengzhou Harmoni Spice Co., Ltd. (''Harmoni''), Jinxiang Shanyang Freezing Storage Co., Ltd. (''Shanyang''), and Jinan Yipin Co., Ltd. (''Jinan Yipin'').

[4] The seven respondents are Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, and Taian Ziyang Food Co., Ltd. (''Ziyang'').

Shipper Reviews: Fresh Garlic from the People's Republic of China, 71 FR 14681 (March 23, 2006).

On March 22, 2006, we issued a letter to all interested parties requesting comments on publicly available information to value garlic bulbs for the final results of review. We received comments from the petitioners, Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, Ziyang, and FHTK on March 28, 2006.

On April 14, 2006, we extended the time limit for the completion of the final results of these reviews, including our analysis of issues raised in case or rebuttal briefs, until April 26, 2006. *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China*, 71 FR 20645 (April 21, 2006).

We have conducted these reviews in accordance with sections 751 and 777 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213, 351.214 and 352.221 (2005).

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (''CBP'') to that effect.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the Issues and Decision Memorandum, dated April 26, 2006 (''Decision Memorandum''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document which is on file in CRU in room B–099 in the main Department building, and is accessible on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the memorandum are identical in content.

Partial Recession of Administrative Reviews

In the *Preliminary Results*, the Department issued a notice of intent to rescind the administrative review with respect to Shanghai Ever Rich Trade Company (''Ever Rich'') because we found no evidence that Ever Rich made shipments of subject merchandise during the POR. The Department also issued a notice of intent to rescind the administrative review with respect to Linyi Sanshan Import & Export Trading Co., Ltd. (''Linyi''), Shandong Jining Jishan Textile Co., Ltd. (''Shandong Jining''), Tacheng County Dexing Foods Co., Ltd. (''Tancheng''), and Xiangcheng Yisheng Foodstuff Co., Ltd. (''Yisheng'') because no other parties requested a review of these companies and the petitioners have withdrawn their request. *See Preliminary Results*, 70 FR at 69944. The Department received no comments on this issue, and we did not receive any further information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, the Department is rescinding this administrative review with respect to Ever Rich, Linyi, Shandong Jining, Tancheng, and Yisheng.

Separate Rates

In our *Preliminary Results*, we determined that Dong Yun, FHTK, Hongda, Harmoni, Linshu Dading, Sunny, Ziyang, Jinan Yipin, Trans–High, WSFC, Shanyang, Shanghai LJ, and Qingyuan met the criteria for the application of a separate rate. We determined that Pizhou Guangda Import and Export Co., Ltd. (''Guangda''), H&T Trading Company (''H&T''), Jinxiang Hongyu Freezing and Storing Co., Ltd. (''Hongyu''), Jining Yun Feng Agriculture Products Co., Ltd. (''Yun Feng''), Clipper Manufacturing Ltd. (''Clipper''), and Heze Ever–Best International Trade Co., Ltd. (''Ever Best'') did not qualify for separate rate status and, therefore, are deemed to be included in the PRC entity. *See Preliminary Results*, 70 FR at 69943. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

The PRC–Wide Rate and Use of Adverse Facts Available

Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever–Best

In the *Preliminary Results*, we determined that the PRC entity (including Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever–Best) received copies of the questionnaire but did not respond and, therefore, failed to cooperate to the best of its ability in the administrative review. Accordingly, we determined that the use of facts otherwise available in reaching our determination is appropriate pursuant to sections 776(a)(2)(A) and (B) of the Act and that the use of an adverse inference in selecting from the facts available is appropriate pursuant to section 776(b) of the Act. In accordance with the Department's practice, as adverse facts available, we assigned to the PRC entity (including Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever–Best) the PRC–wide rate of 376.67 percent. For detailed information on the Department's corroboration of this rate, *see Preliminary Results*, 70 FR at 69942, and Memorandum to the File, entitled ''2003–2004 Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Corroboration of the PRC–Wide Adverse Facts–Available Rate,'' dated November 10, 2005.

Normal Value Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate normal value (''NV'') using the factors of production (''FOPs'') that a respondent consumes in order to produce a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. First, in some cases, a respondent may report factors used to produce an intermediate input that

accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. *See*, *e.g.*, *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying *Issues and Decision Memorandum* at Comment 3 (''*Fish Fillets Final*'').

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002), and *Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001). *See also Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying *Issues and Decision Memorandum* at Comment 2; *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 498, 449 (January 31, 2003); and *Fish Fillets Final*.

In the *Preliminary Results*, the Department found that the respondents in these proceedings are unable to accurately record and substantiate the complete costs of growing garlic based on our analysis of the information on the record and for the reasons outlined in the Memorandum to the File entitled, ''2003–2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology,'' dated November 10, 2005 (''*Intermediate Product Memorandum*''). *See Preliminary Results*, at 69948. In order to eliminate the distortions in our calculation of NV for all of the reasons identified in the *Intermediate Product Memorandum*, we have applied an intermediate–product valuation methodology to all companies for these final results of review. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (*i.e.*, the ''intermediate product''), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, *see Intermediate Product Memorandum* and the *Decision Memorandum* at Comment 1.

In future reviews, should a respondent be able provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV. For further details, *see Intermediate Product Memorandum*.

Changes Since the Preliminary Results

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the margin calculations for certain respondents.

We have revalued several of the surrogate values used in the *Preliminary Results*. The values that were modified for these final results are those for garlic bulbs, foreign brokerage and handling, ocean freight, and the surrogate financial ratio for overhead, selling, general and administrative expenses, and profit. For further details *see* ''Factors Valuations for the Final Results of the Administrative Review,'' dated April 26, 2006.

In addition, we have made some company–specific changes since the *Preliminary Results*. Specifically, we have incorporated, where applicable, post–preliminary clarifications, and performed clerical error corrections for Shanyang, FHTK, Qingyuan, Sunny and Linshu Dading. For further details on these company–specific changes, *see Decision Memorandum* at Comments 14 through 22. For further information detailing all of these changes, *see* Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinan Yipin Corporation, Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Linshu Dading Private Agricultural Products Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Sunny Import and Export Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Zhengzhou Harmoni Spice Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Weifang Shennong Foodstuff Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jining Trans–High Trading Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Shanghai LJ International Trading Company,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Dong Yun Freezing Storage Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Taian Ziyang Food Co., Ltd.,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of

China: Huaiyang Hongda Dehydrated Vegetable Company,'' dated April 26, 2006; Memorandum to the File, entitled ''Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Zhangqiu Qingyuan Vegetable Co., Ltd.,'' dated April 26, 2006; and Memorandum to the File, entitled ''Analysis for the Final Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Taian Fook Huat Tong Kee Foodstuffs Co., Ltd.,'' dated April 26, 2006.

Final Results of the Reviews

The Department has determined that the following final dumping margins exist for the period November 1, 2003, through October 31, 2004:

Exporter	Weighted–average percentage margin
Fook Huat Tong Kee Pte., Ltd.	5.56
Huaiyang Hongda Dehydrated Vegetable Company	0.00
Jinan Yipin Corporation, Ltd.	29.52
Jining Trans–High Trading Co., Ltd.	0.00
Jinxiang Dongyun Freezing Storage Co., Ltd.	0.29 (*de minimis*)
Jinxiang Shanyang Freezing and Storage Co., Ltd.	14.79
Linshu Dading Private Agricultural Products Co., Ltd.	22.47
Sunny Import & Export Limited	10.52
Taian Ziyang Food Co., Ltd.	0.95
Weifang Shennong Foodstuff Co., Ltd.	0.00
Zhengzhou Harmoni Spice Co., Ltd.0.27 (*de minimis*).	
Shanghai LJ International Trading Co., Ltd.	0.00
Zhangqiu Qingyuan Vegetable Co., Ltd.	15.36
PRC–wide rate*	376.67

* includes Pizhou Guangda Import and Export Co., Ltd., H&T Trading Company, Jinxiang Hongyu and Storing Co., Ltd., Jining Yun Feng Agriculture Products Co., Ltd., Clipper Manufacturing Ltd., and Heze Ever–Best International Trade Co., Ltd.

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(6).

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of these reviews. For assessment purposes, we divided the total dumping duties due for each importer (or customer) by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. For duty–assessment rates calculated on this basis, we will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each of the applicable importer's (customer's) entries of the subject merchandise during the POR.

Bonding will no longer be permitted to fulfill security requirements for shipments of fresh garlic from the PRC produced by Xiangcheng San Li and exported by Shanghai LJ, and produced and exported by Qingyuan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Shanghai LJ and Qingyuan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced by Xiangcheng San Li and exported by Shanghai LJ, and produced and exported by Qingyuan, the cash–deposit rate will be that established in these final results of reviews; (2) for subject merchandise exported by Shanghai LJ but not manufactured by Xiangcheng San Li, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Qingyuan, but manufactured by any other party, the cash deposit rate will be the PRC–wide rate (*i.e.*, 376.67 percent).

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Dong Yun, FHTK, Hongda, Jinan Yipin, Linshu Dading, Sunny, Ziyang, Trans–High, Harmoni, WSFC, and Shanyang, the cash–deposit rate will be that established in these final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 376.67 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results of administrative review and new shipper reviews is issued and published in accordance with sections 751(a)(2)(c) and 777(i) of the Act.

Dated: April 26, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix 1

Decision Memorandum

1. Use of Intermediate Input Methodology
2. Valuation of Garlic Bulb
3. Calculation of Surrogate Wage Rate

4. Double Counting of Selling Expenses, Profits, Land Cost, Packing or Processing Costs
5. By–products
6. Valuation of Foreign Brokerage and Handling
7. Valuation of Ocean Freight
8. Valuation of Cartons
9. Valuation of Jars
10. Financial Ratios
11. Sunny's Observed Labor Hours at on–site Verification
12. FHTK's Observed Labor Hours at on–site Verification
13. Trans–High's Observed Labor Hours at on–site Verification
14. Yield Loss Ratio for Shanyang
15. Yield–Loss Ratio to Processing Inputs for FHTK
16. Water and Electricity - FHTK
17. Clerical Error - Valuation of Cartons for Shanyang
18. Clerical Error - Shanyang's Plastic Jars and Lids
19. Exchange Rate Application - FHTK
20. Clerical Error - Linshu Dading Select Gross Unit Prices
21. Clerical Error - Bulb Freight for Sunny and Qingyuan
22. Clerical Error Calculation of Electricity for Qingyuan
23. Clerical Error - Normal Value Calculation for Dong Yun
24. Clerical Error - FOPs for Direct and Indirect Labor - FHTK

[FR Doc. E6–6759 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part

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

SUMMARY: On December 28, 2005, the Department of Commerce (the Department) published its *Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part*, 70 FR 76766 (December 28, 2005) (*Preliminary Results*). This administrative review covers two exporters, Seylinco S.A. (Seylinco) and Asociacion de Cooperativas Argentinas (ACA), of subject merchandise to the United States during the period of review (POR) of December 1, 2003, to November 30, 2004. The petitioners involved this review are the Sioux Honey Association and the American Honey Producers Association (Petitioners). We are rescinding the review with respect to Nutrin S.A. (Nutrin), Radix S.A. (Radix), Compania Europea Americana S.A. (CEASA) and HoneyMax S.A. (HoneyMax) because these companies had no entries of subject merchandise to the United States during the period of review. We have also determined not to revoke the antidumping duty order with respect to ACA. Based on our analysis of comments received, the margin calculations for these final results do not differ from the preliminary results.

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Angela Strom for ACA, Brian Sheba for Seylinco or Robert James, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2704, (202) 482–0145, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2005, the Department published its *Preliminary Results* of this antidumping duty administrative review of honey from Argentina. In response to the Department's invitation to comment on the preliminary results, ACA submitted its case brief on January 30, 2006, and petitioners submitted its rebuttal brief on February 7, 2006. In addition, two *ex parte* meetings were held with respect to this review. *See* Memorandum to the file, dated February 27, 2006, on file in the Central Records Unit (CRU) in room B–099 of the main Commerce building.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under this order is dispositive.

Partial Rescission of Review

As noted in the *Preliminary Results*, Nutrin, Radix, CEASA and HoneyMax had no shipments of subject merchandise to the United States during the POR. We have confirmed this with data from Customs and Border Protection (CBP). Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to these companies. *See*, *e.g.*, *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Administrative Review in Part*, and Determination Not to Revoke in Part, 69 FR 64731, 64732 (November 8, 2004).

Determination Not to Revoke in Part

For these final results, the Department has relied upon ACA's sales activity during the 2001–2002, 2002–2003, and 2003–2004 PORs in making its decision with respect to ACA's revocation request. Although ACA had two consecutive years of sales at not less than normal value (NV), ACA has not received a zero or *de minimis* margin in the instant review. Thus, ACA is not eligible for consideration for revocation under section 351.222(b) of the Department's regulations. Furthermore, pursuant to section 351.222(d)(1), we find that ACA did not ship in commercial quantities in each of the three years forming the basis of the request for revocation. Accordingly, we have determined not to revoke the antidumping duty order with respect to ACA.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration. A list of issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the CRU and can be accessed directly on the Web at *http://www.ita.doc.gov/*.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made no changes in the margin calculation.

Final Results of Review

We determine that the following dumping margins exist for the period December 1, 2003, through November 30, 2004.

Manufacturer / Exporter	Weighted Average Margin (percentage)
Asociacion de Cooperativas Argentinas	2.95
Seylinco S.A.	0

Assessment

The Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The Department will issue appropriate *ad valorem* assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the POR.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act):

(1) the cash deposit for all companies reviewed will be the rates established in the final results of review;

(2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company–specific rate published in the most recent period;

(3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the LTFV investigation (30.24 percent). *See Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (December 10, 2001). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: April 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix: Issues and Decision Memorandum

1. Warranty Expense Methodology

2. Testing Expenses

[FR Doc. E6–6758 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806, A–351–806]

Silicon Metal from the People's Republic of China and Brazil: Final Results of the Expedited Reviews of the Antidumping Duty Orders

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

SUMMARY: On January 3, 2006, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on Silicon Metal from the People's Republic of China (''PRC'') and Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 91 (January 3, 2006) (''*Initiation Notice*''). On the basis of the notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties, and no responses from respondent interested parties, the Department conducted expedited sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: James Nunno, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–0783.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on silicon metal from the PRC on June 10, 1991, and from Brazil on July 31, 1991. *See Antidumping Duty Order: Silicon Metal from the People's Republic of China*, 56 FR 26649; *see also Antidumping Duty Order: Silicon Metal from Brazil*, 56 FR 36135. On January 3, 2006, the Department initiated sunset reviews of the antidumping duty orders on Silicon Metal from the PRC and Brazil pursuant to section 751(c) of the Act. *See Initiation Notice*. The Department received a notice of intent to participate from a domestic interested party, Globe Metallurgical Inc. (''Globe''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Globe claimed interested party status pursuant to section

771(9)(C) of the Act as a U.S. producer of the domestic like product. We received a submission from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. However, we did not receive submissions from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted expedited sunset reviews of these orders.

Scope of the Orders

PRC

The merchandise covered by this order is silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this antidumping order is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Brazil

The merchandise covered by this order is silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this antidumping order is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Scope Clarifications

PRC

There has been one scope clarification in this proceeding. See Scope Rulings, 58 FR 27542 (May 10, 1993). In a response to a request by domestic interested parties for clarification of the scope of the antidumping duty order, the Department determined that silicon metal containing between 89.00 percent and 99.00 percent silicon by weight, but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent, but less than 99.99 percent silicon by weight, is the same class or kind of merchandise as the silicon metal described in the original order. Therefore, such material is within the scope of the order on silicon metal from the PRC.

Analysis of Comments Received

All issues raised in these cases are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated April 27, 2006 (''Issues and Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department building.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on our Web site at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on Silicon Metal from the PRC and Brazil would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
PRC.	
PRC–wide Rate	139.49
Brazil[1].	
Camargo Correa Metais, S.A. (''CCM'')	93.20
Companhia Brasileira Carbureto de Calcio (''CBCC'')	Revoked
RIMA Eletrometalurgica S.A. (''RIMA'')	Revoked
All Others	91.06

[1]We will notify the ITC that Companhia Brasileira Carbureto de Calcio (''CBCC'') and RIMA Eletrometalurgica S.A. (''RIMA'') are no longer subject to the order. *See Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998); *see also Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 68 FR 57670 (October 6, 2003) (order revoked as to CBCC) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225 (December 17, 2002) (order revoked as to RIMA).

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–6760 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Steel Concrete Reinforcing Bars from Latvia: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Shane Subler at (202) 482–0189, AD/CVD Operations, Office 1, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2005, Joint Stock Company Liepajas Metalurgs, a Latvian producer of subject merchandise, requested an administrative review of the antidumping duty order on Steel Concrete Reinforcing Bars from Latvia. On September 30, 2005, the petitioners in the proceeding, the Rebar Trade Action Coalition[1] and its individual members, also requested an administrative review of the antidumping order. On October 25, 2005, the Department published a notice of initiation of the administrative review, covering the period September 1, 2004, through August 31, 2005 (70 FR 61601). The preliminary results are currently due no later than June 2, 2006.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for (1) the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and (2) the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limits. Several complex issues related to merchandise classification, date of sale, and cost of production have been raised during the course of this administrative review. The Department needs more time to address these items and evaluate the issues more thoroughly.

For the reasons noted above, we are extending the time limit for completion of the preliminary results until no later than August 1, 2006. We intend to issue the final results no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: April 28, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–6761 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Rebar Trade Action Coalition comprises Gerdau AmeriSteel, CMC Steel Group, Nucor Corporation, and TAMCO.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041306A]

Taking of Marine Mammals Incidental to Specified Activities; On-ice Seismic Operations in the Beaufort Sea

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting on-ice vibroseis seismic operations in the Harrison Bay portion of the western U.S. Beaufort Sea has been issued to Kuukpik Veritas DGC (Kuukpik) for a period of 1 year.

DATES: Effective from April 30, 2006 through April 29, 2007.

ADDRESSES: The authorization and application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. The application is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

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.

Permission may 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 for certain categories of 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 24, 2005, NMFS received an application from ASRC Energy Services, Lynx Enterprises, Inc. (AES Lynx) on behalf of Kuukpik for the taking, by harassment, of two species of marine mammals incidental to conducting an on-ice seismic survey program. The seismic operations will be conducted in the Harrison Bay portion of the western U.S. Beaufort Sea. The proposed survey would be conducted

from through May 20, 2006. The operation will consist of laying seismic cables with geophones on the frozen sea ice, employing the vibroseis method of energy (sound source) production, and recording the seismic signals. Water depths in the majority of the planned survey area are less than 3 m (9.8 ft).

The purpose of the project is to gather information about the subsurface of the earth by measuring acoustic waves, which are generated on or near the surface. The acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts.

Description of the Activity

The seismic surveys use the ''reflection'' method of data acquisition. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth, including sea ice and water, as well as sub-sea geologic formations, and then uses ground sensors to record the reflected energy transmitted back to the surface. When acoustic energy is generated, compression and shear waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast. Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with wheeled vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with tracked vehicles are typically limited by heavy snow cover and may require trail clearance beforehand.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line and begin recording data. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g. 67 m, or 220 ft, in most applications) and repeats the process. In a typical 16- to 18–hour day, a surveys will complete 6–16 km (4 to 10 linear miles) in 2–dimensional seismic operations and 24 to 64 km (15 to 40 linear miles) in a 3–dimensional seismic operation.

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on February 27, 2006 (71 FR 9782). During the 30–day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission).

Comment 1: As noted in the Commission's previous letters on similar requests, the Commission believes that the effects of the activities proposed, by themselves, are likely to be negligible. However, the Commission continues to be concerned that the cumulative impacts of (1) many such activities in the Beaufort Sea (see National Academy of Sciences report entitled Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope), and (2) predicted climate change in this region may, at some point, have more than negligible impacts on marine mammal populations.

Response: NMFS is unaware of any other wintertime seismic operations in the U.S. Beaufort Sea. The only other potential ice-road construction activity is by Northstar operations near Prudhoe Bay (70 FR 17066, April 4, 2005), which is about 100 miles (1,610 km) from the proposed action in the Coleville Delta/Harrison Bay region of the Beaufort Sea. No ice-roads have been constructed in recent years due to use of hovercraft for transportation. As for the cumulative impacts:

(1) The report *Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope* (Report) released by the National Academy of Science lists industrial noise and oil spill as major impacts to marine mammals from oil and gas development. So far the prevalent human induced mortalities on marine mammals (bowhead whales, seals, and polar bears) in this region are from subsistent hunting. The *Report* further predicts that ''if climate warming and substantial oil spills did not occur, cumulative effects on ringed seals and polar bears in the next 25 years would likely be minor and not accumulate''. In its findings, the Report concludes that ''industrial activity in marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious accumulating effects on ringed seals or polar bears''; and ''careful mitigation can help to reduce the effects of North Slope oil and gas development and their accumulation, especially if there is no major oil spill''. The proposed activity would have no potential for oil spill, neither would it produce noise that is high enough to cause any harm to marine mammals.

(2) Although climate warming should be a concern for the sustainability of the entire ecosystem in the Alaska's North Slope region, it is irrelevant to the proposed action since the on-ice seismic activity would neither contribute nor reduce the pace of global warming. The melting of shore-fast ice by itself would only reduce the on-ice activity as it would be unsafe to employ vibroseis survey techniques. At least 4 ft (1.2 m) of ice thickness is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities.

Comment 2: The Commission questions whether arctic cod, which are a primary prey of ringed seals, could be adversely affected by vibroseis surveys.

Response: Most of the on-ice seismic survey would be conducted in areas where water depth is under 3 m (9.8 ft) with the shore-fast ice at 1.2 m (4 ft) thick. This is not preferred habitat for the arctic cod, which is commonly found at the surface of the sea close to shore among ice floes.

Comment 3: The Commission reiterates its recommendation that monitoring programs for the proposed activities be expanded to collect more general data on changes in density and abundance of potentially affected marine mammals, reproductive rates, prey availability, foraging patterns, distribution, and contaminant levels where oil and gas exploration, development, and production occur. The Commission considers such information essential for ensuring that subtle changes occurring over short periods (i.e., seasonally or annually) have negligible cumulative effects over longer periods.

Response: Under section 101(a)(5)(D) of the MMPA, NMFS must prescribe a monitoring program that the applicant must implement to provide information on marine mammal takings and impacts on affected species and stocks. As provided in the **Federal Register** notice of receipt of this IHA application (71 FR 9782, February 27, 2006), seal density and structure survey would be conducted before selection of transit routes, and a second seal structure survey would be performed shortly after

the end of the seismic surveys. A detailed description of the survey is provided in that **Federal Register** notice (71 FR 9782, February 27, 2006) and is not repeated here. However, an expanded program to collect information on prey availability, foraging patterns, and contaminant levels of marine mammals is beyond the scope of the proposed action.

Comment 4: The Commission believes that the use of trained dogs is the only reliable method for locating ringed seal lairs and other structures. Thus, if trained dogs are not available for the initial survey, the Commission does not believe that the NMFS should accept monitoring by humans as an alternative until it has been demonstrated that such monitoring is as effective as that carried out using dogs.

Response: While NMFS believes the use of trained dogs to locate ringed seal lairs during on-ice surveys conducted in areas with water depth less than 3 m (9.8 ft) is the best method to detect ringed seals in winter, NMFS also believes that the use of experienced subsistence hunters should be an alternative only if no dogs are available. In such cases, NMFS requires the applicant to provide certifications from owners of trained dogs stating that no dogs are available for the purposed surveys during the survey days. The applicant points out it has certain concerns over the required dogs, including the biasing of locating abandoned versus active holes, the potential of attracting polar bears, potential takes of seals by dogs, and the opposition from the native groups.

Comment 5: The Commission also notes that the probability of physical damage to seal lairs and holes or individual seals is related to the total area affected, and it suggests that vehicles stay on the actual shot lines to the maximum extent possible.

Response: The majority of the areas (≤ 95 percent) that would be subject to on-ice seismic survey would be under 3 m (9.8 ft) deep, therefore are not ringed seal habitat. Nevertheless, NMFS is requiring the applicant to have survey vehicles stay on the actual shot lines to the maximum extent possible.

Comment 6: The Commission further recommends that the authorization specify that operations be suspended if a mortality or serious injury of a seal occurs. The suspension would provide an opportunity for NMFS to determine whether steps can be taken to avoid further injuries or mortalities and whether an incidental take authorization is needed under section 101(a)(5)(A) of the MMPA.

Response: NMFS agrees, and the IHA condition will specify that operations be suspended if a mortality or serious injury of a seal is detected.

Comment 7: The Commission noted that the application indicates that a brief portion of the proposed project may be conducted over open water if on-ice studies are inadequate and further resolution is needed. Such open-water work would involve the use of small airgun arrays. If it has not already done so, the Commission asks NMFS to request additional information from the applicant on this portion of the proposed activities (e.g., sizes of airguns, zones of influence, etc.).

Response: The application NMFS received on February 7, 2006, indicates that open-water surveys would only be necessary if on-ice seismic surveys indicate that there may be a dead zone from where inadequate or jumbled seismic signals were recorded. Under such circumstances when open-water seismic surveys become necessary, the applicant will be required to submit a new IHA application for open-water surveys providing detailed information on this proposed activity. Open-water seismic surveys are not authorized under this IHA.

Comment 8: The application states that the applicant will seek a Letter of Authorization (LOA) from U.S. Fish and Wildlife Service (USFWS) for intentional take of polar bears. NMFS should advise the applicant that it will need to obtain appropriate authorizations from FWS for any taking of polar bears.

Response: Both intentional and unintentional, incidental take of marine mammals is prohibited under the MMPA, unless the take has been authorized by the appropriate agency. NMFS encourages the applicant to contact the FWS regarding appropriate authorizations for any intentional or unintentional, incidental taking of polar bears that may occur as a result of their activities.

Description of Habitat, Marine Mammals Affected by the Activity, and the Impact on Affected Marine Mammals

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001). A more detailed description of the seismic survey activities and affected marine mammals can be found in the AES Lynx application (see **ADDRESSES**). Four marine mammal species are known to occur within the proposed study area: ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), and polar bear (*Ursus maritimus*). The applicant reached an arrangement with the USFWS for the intentional taking of polar bears because USFWS has management authority for this species. Spotted seals are not known winter users of the project area, therefore, no incidental take is expected for this species. A more detailed description of ringed and bearded seals can be found in the proposed IHA notice (71 FR 9782, February 27, 2006). That information is not repeated here.

Mitigation and Monitoring

The following mitigation measures will be implemented for the subject surveys. All activities will be conducted as far as practicable from any observed ringed or bearded seal lair and no energy source will be placed over a ringed or bearded seal lair. Only vibrator-type energy-source equipment shown to have similar or lesser effects than proposed will be used. Kuukpik will provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly.

Ringed seal pupping occurs in ice lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys in areas where water depth is less than 3 m (9.8 ft) in mid-March, trained dogs will be used to screen for lairs along the planned on-ice seismic transmission routes. In case that no dogs are available for the scheduled survey, experienced Inupiat subsistence hunters will be hired to look for seal lairs. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs at locating seal structures. Few, if any, seals inhabit ice-covered waters shallower than 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

Kuukpik will also continue to work with NMFS, other Federal agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and the Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. A Plan of Cooperation was developed between Kuukpik and Nuiqsut to ensure that

seismic activities do not interfere with subsistence harvest of ringed or bearded seals.

The level of impacts, while anticipated to be negligible, will be assessed by conducting a second seal structure survey shortly after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snow machines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating possible harassment takes. If dogs are not available for the initial survey, takings will be estimated by using observed densities of seals on ice reported by Moulton *et al.* (2001) for the Northstar development, which is approximately 24 nm (46 km) from the eastern edge of the proposed activity area.

Seal structures take estimates will be determined for the portion of the activity area exposed to seismic surveys in water depths of 3 m (9.8 ft) or less. Take for this area will be estimated by using the observed density (13/100 km^2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This will be an overestimation requiring a substantial downward adjustment to better reflect the likely take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and the Moulton *et al.* (2001) estimate includes all seals.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an incidental harassment authorization under section 101(a)(5)(D) of the MMPA to Kuukpik for this on-ice seismic survey.

National Environmental Policy Act (NEPA)

The information provided in Environmental Assessments (EAs) prepared in 1993 and 1998 for winter seismic activities led NOAA to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is not substantially different from the 1993 and 1998 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years that would warrant new NEPA documentation.

Determinations

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible (and limited to the taking of small numbers) for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed and bearded seal populations in the Beaufort Sea.

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Most of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft) deep.

(3) For reasons of safety and because of normal operational constraints, seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous.

(4) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1,000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(5) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(6) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and population dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, Kuukpik and NMFS believe the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS has determined, based on information in the application and supporting documents, that these changes in behavior will have no more than a negligible impact on the affected species or stocks of ringed and bearded seals. Also, the potential effects of the on-ice seismic operations during 2006 are unlikely to result in more than small numbers of seals being affected and will not have an unmitigable adverse impact on subsistence uses of these two species.

Authorization

NMFS has issued an IHA to Kuukpik for conducting seismic surveys from in the Harrison Bay area of the western

U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 28, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–6768 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032706A]

Notice of Availability of Final Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2005 are now complete and available to the public.

ADDRESSES: Send requests for copies of reports or revised guidelines to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Tina Fahy, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, e-mail *Robyn.Angliss@noaa.gov*; Gordon Waring, Northeast Fisheries Science Center, e-mail *Gordon.Waring@noaa.gov*; or Tina Fahy, Southwest Regional Office, 562–980–4023, e-mail *Christina.Fahy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

Stock assessment reports are available via the Internet at *http://www.nmfs.noaa.gov/pr/sars/*.

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

Comments and Responses

The draft 2005 SARs were available for public review (70 FR 37091, June 28, 2005) for a 90–day comment period, which ended on September 26, 2005. NMFS received letters from two Federal agencies (Marine Mammal Commission (Commission) and U.S. Geological Survey), one individual, and three organizations (Alaska Native Sea Otter and Steller Sea Lion Commission, Hawaii Longline Association, and Marine Conservation Alliance).

The U.S. Geological Survey had no comments. The Commission's comments were directed to national issues and to individual regional reports. All other comments were directed toward regional reports.

Unless otherwise noted, comments suggesting editorial or clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended additional survey effort, observer programs, or Take Reduction Plans. Comments on the need to develop additional Take Reduction Plans are not related to the SARs; therefore, these comments are not included below. Comments recommending additional data collection have been addressed in recent years. Responses to these comments indicated that NMFS' resources for surveys or observer programs were fully utilized, and no new large surveys or observer programs may be initiated until additional resources are available. Such comments on the 2005 SARs may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for or incorporated in future revisions of the SAR rather than being incorporated into the final 2005 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR results in a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change.

Comments on National Issues

The Commission noted that the SARs addressed a number of issues inconsistently and recommended NMFS review the assessment issues, develop appropriate, precautionary policies for addressing them, and take the steps necessary to ensure consistent application of the policies among all regions and for all stocks of marine mammals.

Comment 1: NMFS should ensure that information provided within the SARs is consistent among the contributions from various regional offices. For example, the summary tables for SARs from different regions should compile information in the same manner and should include not only estimates of populations size and mortality rates, but also the variances of those estimates.

Response: NMFS agrees there should be a certain level of consistency in the tables, but there may be important differences in some regions that warrant inclusion in the summary tables. For example, subsistence harvest results in substantial mortality for some stocks in the Alaska region, and such harvests do not occur in the Atlantic or Pacific regions. The Alaska SARs, therefore, include a column in the summary table for subsistence mortality, and this column does not appear in the other two regional SARs. Similarly, the Atlantic and Pacific SARs include a column to identify which Science Center within NMFS produced the reports because four Science Centers (Alaska,

Northwest, Pacific Islands, and Southwest) contribute to the Pacific reports, and two Science Centers (Northeast and Southeast) contribute to the Atlantic reports. All of the reports in the Alaska region are prepared by the Alaska Fishery Science Center; therefore, such a column is not necessary for this regional report. Beginning with the 2006 SARs, NMFS will ensure that there is a consistent core of information. However, other information in these tables would be optional for the authors to include.

Comment 2: For population estimates, it would be useful to include [in the summary table] the year of the most recent survey and interval between repeat surveys for stocks that are monitored on a regular basis.

Response: This history of surveys and estimates are included in the reports and will not be repeated in the summary table. The summary tables provide only certain key information, such as the stock identity, the statistics used to calculate the Potential Biological Removal (PBR) level, fishery and total human-caused mortality, and the status of the stock.

Comment 3: The Commission reiterated a comment the agency had submitted in 2004 that in the absence of any information on sources of mortality, and without guidance from the SRGs, the precautionary principle should be followed, and the default stock status should be strategic until information is available to demonstrate otherwise. For example, all four Arctic seal species in Alaska waters are classified as non-strategic although very little information is available for any of these species, several of them are subject to substantial subsistence harvests, and they are all likely to be especially vulnerable to ongoing climate changes in the Arctic. In contrast, all stocks of beaked whales are classified as strategic even though the information on their status is similarly limited, they may also be vulnerable to climate change, and they may be sensitive to anthropogenic sound.

Response: NMFS has consistently followed its guidelines in these examples even though the ice seals are classified as non-strategic whereas the beaked whales are classified as strategic. For species or stocks that are not listed as threatened or endangered, designated as depleted, or declining and likely to become depleted, threatened or endangered, the status (strategic or non-strategic) is determined by the level of human-caused mortality compared to the stock's PBR. The effects of environmental or climate variability do not affected its status under the MMPA unless the threat is sufficient to designate them as depleted, threatened or endangered.

NMFS and the Alaska SRG discussed the status of ice seals, and these discussions resulted in an agreement that a strategic status for ice seals is not warranted at this time because the general experience of the experts in these discussions suggested that human-caused mortality was likely small related to the stocks' size (thus, mortality would not likely exceed PBR if abundance and total mortality of these stocks were estimated). Consequently, the ice seals were designated non-strategic. The status of ice seals was discussed at the January 2006 meeting of the Alaska SRG, and the designation is being reviewed for the 2006 SARs.

On the other hand, the authors of the beaked whale SARs, in consultation with the SRGs, noted that reported mortality of beaked whales incidental to human activities could well be an underestimate, and total mortality may exceed PBR for these stocks. Therefore, the beaked whales were designated as strategic stocks.

Comment 4: A number of species of marine mammals are difficult to distinguish by visual observation in the field (e.g., dwarf and pygmy sperm whales, short- and long-finned pilot whales, and a variety of beaked whale species). NMFS has made progress using a variety of techniques to distinguish these animals and at present seems to rely on one or both of two approaches for estimating abundance of these animals: (1) Estimating a combined abundance for the entire group of species (e.g., pilot whales, dwarf and pygmy sperm whales, and beaked whales along the Atlantic coast), or (2) estimating minimum abundance of each species based on the limited information available (e.g., beaked whales in the Gulf of Mexico). NMFS should use a consistent approach for these similar situations.

Response: The approach used for beaked whales in the Gulf of Mexico will be discontinued in the 2006 reports. These reports will be prepared using approach (1) in the comment and will be consistent with other species that are difficult to distinguish in the field. When it becomes feasible to partition mortality and abundance by single stocks, NMFS will update the affected SARs accordingly.

Comment 5: For a variety of reasons, animals involved in entanglements, ship strikes, stranding, etc., often are identified only by broad taxonomic categories (e.g., ''unidentified seal'' or ''unidentified whale''). NMFS currently uses a variety of approaches to estimate serious injury/mortality rates for marine mammal stocks. In some cases, such as the western North Atlantic offshore stock of bottlenose dolphins, NMFS does not estimate serious injury/mortality if unidentified takes occur within a area of spatial overlap with other stocks. In other cases, such as the western North Atlantic stocks of pilot whales, a combined mortality estimate is derived for all species within a group. For stocks that generally are not difficult to distinguish, such as the western North Atlantic stocks of gray seals and hooded seals, mortality estimates often are based only on the identified animals, ignoring the potential contribution of unidentified animals to the true mortality.

Response: While recognizing the desire for consistency throughout the SARs, NMFS may need to approach such issues differently for individual species and/or stocks. Recent research efforts have focused on developing methods to differentiate between short-finned and long-finned pilot whales, as well as the bottlenose stocks, along the U.S. Atlantic coast to the degree our resources allow. In the 2006 draft short-finned and long-finned pilot whale SAR, strandings by species are indicated when this information is available, and the pygmy- and dwarf-sperm whale SARs will likewise be modified to reflect strandings by species when such information is available. In cases where it is not possible to determine which species or stock is involved, we include this information in all species or stocks SARs that may be involved.

Comment 6: The Commission repeated a comment from its letter with comments on the 2004 SARs and the updated guidelines regarding a provision in the guidelines indicating that in cases where mortality cannot be attributed to a specific stock, the mortality may be prorated based on the estimated stock abundances. The Commission recommended that NMFS develop alternatives to address such mortality in such a way that small, vulnerable stocks would not be subject to a disproportionate risk.

Response: NMFS responded to this comment in its notice of availability of final 2004 SARs (70 FR 35397, June 20, 2005) by saying NMFS modified the guidelines to require a discussion of the potential for bias in stock-specific mortality in each affected report. NMFS clarifies that the proration would not be based on total stock abundance, rather it would prorate mortality based upon the abundances of the affected stocks in the appropriate geographic area when sufficient information on stock abundance is available.

NMFS anticipates continuing to use such a proration in cases such as for false killer whales within and outside the Exclusive Economic Zone (EEZ) surrounding Hawaii (see response to Comment 8 for a more complete description of the approach). Such an approach does not increase the risk for a vulnerable stock and will continue to be used until there is sufficient information to assess stock structure and abundance of false killer whale occupying areas outside waters under the jurisdiction of the U.S. and the effect of fishery mortality from U.S. and other nations' fisheries on the affected stocks.

Comment 7: The Commission repeated another comment from its letter on the 2004 SARs and updated guidelines related to PBR for declining stocks. The Commission recommended NMFS set PBR for declining stocks at zero and to develop a precautionary approach to the management of declining stocks and apply that approach consistently.

Response: There were several comments on the 2004 SARs and revised guidelines related to PBR for declining stocks. NMFS responded to these comments saying, among other things, that zero may not always be the appropriate PBR for a declining stock. Furthermore, each situation where marine mammal stock abundances are declining has many case-specific attributes, and a consistent, precautionary approach (e.g., PBR = 0) may not fit each case. Therefore, NMFS will continue to addresses these situations on a case-by-case basis.

Comment 8: The Commission stated that NMFS seems to use two contradictory approaches for assessing the status of transboundary stocks. In the case of the Hawaiian stock of false killer whales, serious injury/mortality incidental to the Hawaii longline fishery is estimated for the portion of the stock that is found within the U.S. EEZ surrounding the Hawaiian Islands, and that mortality is compared to the PBR calculated for the population within that same EEZ. Mortality and serious injury in international waters are assumed to effect an undefined ''international'' false killer whale stock for which population size and mortality and serious injury are unknown. In the case of the harp seal in the Atlantic, which are harvested in large numbers in Canada and Greenland, mortality is estimated within the U.S. EEZ and compared to the total population size of harp seals in Canada.

Response: The Commission's choice of example illustrates the need to use different approaches in assessing the status of, including the effects of human-caused mortality on, marine mammal stocks. In the case of false killer whales in the Pacific Ocean, the population structure within the entire ocean basin is unknown. However, NMFS has sufficient information to show that the animals occupying the Hawaiian EEZ, particularly those animals near the Hawaiian Islands, are from a different stock than animals occupying the Eastern Tropical Pacific Ocean and other international waters. Using the information available, including results of a survey of marine mammals within the Hawaiian EEZ, NMFS estimated the abundance and PBR for false killer whales in the area. NMFS also estimated U.S. fishery-related mortality and serious injury within the Hawaiian EEZ based upon data from the observer program on the portion of the pelagic longline fishery within the same area. Fisheries from other countries are not active within the EEZ; therefore, mortality and serious injury of marine mammals incidental to fishing within the EEZ is limited to those animals taken incidental to US fishing effort. Thus, the comparison of mortality and serious injury of false killer whales incidental to fishing within the EEZ to the PBR of this stock provides a reasonable assessment of the impact of incidental mortality and serious injury to the affected stock of false killer whales.

Within international waters, however, stock structure, abundance, and total fishery-related mortality and serious injury (of the combined US and international fishing effort) are unknown. Furthermore, with a requirement to produce SARs for only those stocks of marine mammals that occur in waters under U.S. jurisdiction and a limited budget for marine mammal assessment, NMFS is not likely to obtain the information to identify population stocks correctly and estimate the abundance of each stock in international waters. NMFS is able to estimate mortality and serious injury of false killer whales incidental to U.S. fishing effort. This limited information is insufficient to assess the potential impact of fishery-related mortality on the unidentified stocks of marine mammals occupying international waters. Therefore, NMFS uses the information available to the maximum extent feasible to comply with the requirements of MMPA section 117.

Harp seals in the Atlantic are in a very different situation. First, the harp seals in waters under US jurisdiction are primarily young males that seasonally occupy waters off New England and are part of the population from waters under Canadian jurisdiction. Estimates of abundance and mortality of this population of ice seals are available in Canada, the U.S. and elsewhere. Harvest levels of harp seals in Canada and Greenland are established in collaboration with a working group of experts from an international organization (International Council for the Exploration of the Sea), which includes members from the U.S. The harvest levels are estimated using a model that is more sophisticated than the relatively simple PBR approach, which includes mortality and serious injury of harp seals incidental to U.S. fishing effort.

The approaches used in these two situations are, indeed, different. This difference reflects the differences in the biology and understanding of false killer whales on the one hand and harp seals on the other. The two approaches make use of the best scientific information available to assess the status of the affected stocks and the effects of human-caused mortality (including US fishery-related mortality and serious injury governed by MMPA section 118), and each has been discussed with the appropriate SRG as required by MMPA section 117. Even though these two approaches are different, and seemingly contradictory, NMFS considers the differences appropriate.

Comment 9: The Commission concluded their comments with two broad recommendations. First, noting that inconsistency in assessment and management of transboundary stocks may allow a level of mortality and serious injury that the affected stocks cannot withstand, the Commission recommended NMFS develop and implement an effective strategy for assessing mortality levels in transboundary stocks with priority given to those stocks that are harvested or known to interact significantly with domestic or international fisheries. Such a strategy would also require NMFS to conduct research to determine the boundaries of transboundary stocks and to estimate their population size, trend, mortality, and serious injury.

Second, after noting that in many instances the level of observer coverage was very low and that the resulting information may contain significant bias and error, the Commission recommended (in a reiteration of a comment the Commission made on the 2003 SARs) that NMFS establish standards for observer coverage and implement the changes needed to achieve those standards.

Response: NMFS agrees that the most reliable approach to governing interactions between marine mammals and commercial fishing (domestically

and internationally) includes having sufficient information to make fully informed decisions. Related to the first part of this comment, NMFS stated in its original guidelines (Barlow, et al., 1995. U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments. NOAA Technical Memorandum NMFS-OPR–95–6.), ''In transboundary situations where a stock's range spans international boundaries or the boundary of the U.S., the best approach is to establish an international management agreement for the species.'' The guidelines have been revised twice since 1995, and this statement has remained in place. The guidelines also include alternative approaches to address transboundary stocks when the information necessary for the best approach is not available.

In its response to the Commission's comments on the 2003 SARs, NMFS stated that the agency was preparing a document to identify the resource requirements for adequate protected species stock assessments, and the document would describe desired levels of data quality, quantity, and timeliness (69 FR 54262, September 8, 2004). The requirements document has been completed (Merrick et al., 2004. A Requirements Plan for Improving the Understanding of the Status of U.S. Protected Marine Species: Report of the NOAA Fisheries Task Force for Improving Marine Mammal and Turtle Stock Assessments. NOAA Technical Memorandum NMFS-F/SPO–63) and is available on the Internet at the following location: http://www.nmfs.noaa.gov/pr/sars/. In the requirements plan, NMFS describes the current (at the time of publication) state of the information for marine mammal and turtle stock assessment and includes an estimate of the resources (staff and survey time) required to achieve the new standards for improved stock assessment. No new major abundance surveys or observer program could be initiated until additional resources are available.

Comments on Alaska Regional Reports

Comment 10: Descriptions of the fisheries in the SARs are inconsistent and confusing. In some SARs, fisheries are described in the aggregate, while in other SARs, fisheries are listed separately by geography, gear type, and target species.

Response: SARs for some marine mammal stocks are routinely reviewed and updated every year, while SARs for other stocks are updated every 3 years or when there is substantial new information that must be added to the SARs. Thus, the fishery definitions in the 2005 draft SARs have been updated for some stocks, but not for others. NMFS will address fishery descriptions for remaining stocks during the next 2 years.

Comment 11: The SARs use an inconsistent time period for observer data. For instance, in SARs for some stocks, observer data from 1999–2003 are used. For other stocks, a different time period is used, such as 1994–98 for the Pacific white-sided dolphin and 1990–96 data for Southeast Alaska harbor seals.

Response: SARs are revised on a rotating schedule, so not all SARs will include data from the same period of time. The SAR for the Pacific white-sided dolphin has not been updated in a few years; the most current data available during the last revision of that SAR was 1994–98. Similarly, the SAR for harbor seals, Southeast Alaska stock, is based upon the most current information from fisheries there. Also, see response to Comment 10.

Comment 12: It is not clear why observer data from 2004 were not used in the 2005 draft SARs.

Response: It takes approximately a full year to develop new, final SARs. The draft SARs for 2005 were prepared in fall of 2004; at that time, data for 2003 were the most current data available. Observer data for 2004 became available in 2005 and will be incorporated in the draft SARs for 2006, which are currently under preparation.

Comment 13: The largest component of the total mortality for Steller sea lions is the 14.5 mean annual mortalities in the Prince William Sound salmon drift gillnet fishery. These data are 14 years old. Not only are such data suspect because fishing practices have likely changed, but the population level of Steller sea lions in the Prince William Sound area has decreased, making interactions less likely. Further, Prince William Sound is on the edge of the western stock range, and some portion of the 14.5 animals are likely from the eastern Steller sea lion stock.

Response: While the observer data for Prince William Sound that resulted in the mean annual mortality rate of 14.5 Steller sea lions are dated, they remain the best information available on the level of take in this fishery and will be used in the analyses for the List of Fisheries (LOF) until better data on this fishery are collected. Due to funding constraints, the rotating observer program currently responsible for collecting data on marine mammal serious injury and mortality rates in state fisheries will only be able to observe fisheries approximately once every few decades. Thus, NMFS continues to rely on dated information for a number of state fisheries when analyzing the total level of mortality and serious injury of marine mammals throughout Alaska.

Comment 14: There is a double-counting of mortalities in two instances where a single incidental mortality in a fishery is attributed to two stocks and results in two distinct mortalities. This double-counting is a problem for the humpback whale take in the Bering Sea/Aleutian Island that occurred incidental to the Bering Sea/Aleutian Island sablefish pot fishery, the killer whale take that occurred in the Bering Sea/Aleutian Island turbot longline fishery, and the killer whale take that occurred in the Bering Sea/Aleutian Island Pacific cod longline fishery. The estimated fishing mortality levels should be reduced by 50 percent.

Response: Because the humpback whale and killer whale mortalities occurred in an area where more than one stock of these species overlap, assignment of the mortalities to a single stock could not be accomplished for the 2005 draft SARs. There are two procedural options for assigning these mortalities: (1) Pro-rate the mortalities to each stock using the proportion of each stock in the area when there mortalities occurred, (2) assess the impacts of the mortality on each stock. Because option (1) requires information on relative abundance of each stock in the vicinity of the incidental mortality, and this information is not available, this approach cannot be pursued. Thus, the mortalities are included in the SARs for each stock. The report was revised to make it clear that the mortality information shows up in reports for both stocks and cannot be summed to estimate a total take level for all killer whale stocks.

Comment 15: NMFS stated in February 2005 that genetics of the killer whales taken incidental to the commercial fisheries would be analyzed. What are the results of that analysis?

Response: NMFS has completed the genetics analysis of the samples taken from killer whales that were killed incidental to fisheries from 1999–2003. The killer whale mortality in the Bering Sea/Aleutian Island flatfish trawl fishery was a resident killer whale. Both killer whale mortalities in the Bering Sea/Aleutian Islands pollock trawl fishery were transient killer whales. The killer whale mortality in the Bering Sea/Aleutian Island Pacific cod longline fishery was a resident killer whale. No samples were taken from the killer whale mortality that occurred incidental

to the Bering Sea/Aleutian Island turbot longline fishery; thus, the impact of this mortality will be assessed as if it came from either stock. The killer whale SARs will be updated with the new genetics information in 2006.

Comment 16: The Perez document on which the take estimates are based uses catch as an approximation of effort. This is unfounded, as effort can be expressed as days fished, particularly for those fisheries with a high level of observer coverage. The North Pacific Fishery Management Council (Council) and the Scientific and Statistical Committee of the Council recommended that NMFS consider using direct effort data in lieu of catch. NMFS has been doggedly unresponsive.

Response: Information on effort as measured by the number of hooks, number of hauls, days fished, etc. is available for vessels that are observed. However, there is no such measure for unobserved vessels. Because all vessels must report catch, that is the only data that can be used, for all vessels, seasons, and areas, to determine relative levels of effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

Comment 17: The commenter states that 94 percent of the Pacific cod longline harvest comes from observed vessels, with 66 percent of the catch in sampled hauls. According to the 2000 biological opinion for the groundfish fishery, this fishery is 110 percent observed. How can it be the case that the observer coverage provided in the SARs be 27–80 percent?

Response: NMFS has reviewed the 2000 biological opinion and believes that the table to which the commenter is referring is Table 6.4. The table in the biological opinion presents effort calculated based on the total groundfish catch by the vessel when an observer was on board, regardless of how many hauls on that vessel were randomly selected as being ''monitored'' by the observer. In contrast, the effort used in calculations of estimated marine mammal serious injury/mortality is based on the percent of total catch in the randomly selected ''monitored'' hauls. Thus, because the effort was calculated differently for the purposes of this table and for the calculations of serious injury/mortality levels, it is to be expected that there are differences in the percent effort using the two different approaches. In some situations in that table, there is a mismatch of the data between the two databases that results in an apparent 110 percent coverage; there is a note at the bottom of the table (marked with an asterisk) to address this problem.

Comment 18: SARs for various stocks of marine mammals show inconsistent observer coverage ranges. For instance, the 2005 SAR for Pacific white-sided dolphins indicates that the coverage for the aggregated Bering Sea/Aleutians Islands (BSAI) longline fishery is 27–80 percent. However, for other stocks (Steller sea lion, western stock), the Pacific cod longline fishery is identified as having 29.6–percent observer coverage.

Response: The SAR for Pacific white-sided dolphins has not been updated since 2003; at this time, the SAR for that species includes information on the combined groundfish longline fisheries and states that the observer coverage ranged between 27–80 percent during the period 1994–1998. The SAR for the western stock of Steller sea lions covers the period 1999–2003, and provides information on the observer coverage for the Pacific cod longline fishery separate from other types of groundfish longline fisheries. Because the SARs for these species differ in what years of data are included, and in how the fisheries are aggregated, the levels of observer coverage cannot be directly compared.

Comment 19: How does the longline fleet go from being in the range of 80 percent observed for the aggregate fisheries to less than 30 percent observed for the BSAI turbot longline fishery? Which BSAI longline fishery was observed at 80 percent?

Response: In 1990, 80 percent of the catch for the aggregated Bering Sea/Aleutian Islands groundfish longline was observed. Because data are not available to determine the target fishery in 1990, it is not possible to determine observer coverage for different components of the longline fishery in that year. As SARs are updated, these old data will be replaced with current information on levels of observer coverage.

Comment 20: The BSAI turbot longline fishery should not be included in the tables in the SARs that document marine mammal take. The fishery should not be included in the tables due to (1) low frequency of lethal take, (2) no listed incidence of interactions with marine mammals other than killer whales, (3) the small magnitude of the fishery, (4) the declining participation and catch, and (5) the outlook for the fishery is to decrease in total catch and effort.

Response: One killer whale was observed to be killed incidental to the BSAI turbot longline fishery in 1999. As the SARs use the most recent 5 years of information to calculate human-related mortality and serious injury information, it is appropriate to include this mortality in the relevant killer whale SARs for 2005. This mortality will not be included in the estimated total mortality levels calculated in the SARs for 2006, and text that describes the historical take will include relevant statements about trends in the fishery.

Comment 21: NMFS uses a 5–year window for looking at marine mammal interactions with a fishery. The BSAI turbot longline fishery has one take (1999) in 5 years. If there were no takes in 2004, then there are no takes in the most recent 5–year window.

Response: The draft SARs were prepared during the fall of 2004, when only 1999–2003 observer data were available. Thus, the one killer whale take is included in the SARs for 2005. The calculation of the total human-related mortality rate for killer whales will exclude this take in the SAR for 2006.

Comment 22: The number of vessels that actually participate in the fishery is small and is considerably less than the 36 vessels indicated in the LOF. In 2004, only 6 vessels had catches greater than 100mt.

Response: NMFS will review available information on the number of vessels in the flatfish trawl fishery, and other fisheries, and will update the information in the 2006 SARs.

Comment 23: The vessels that participate in the hook and line fishery are all catcher-processor vessels and are all generally observed when participating in the turbot fishery. Vessels over 125 feet (38 m) long have 100–percent observer coverage Vessels between 60–125 feet (18–38 m) long have 30–percent observer coverage, except these vessels must have an observer onboard at all times during at least one fishing trip in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish categories. Thus, because most vessels make only one turbot trip, the net effect of the regulation is that every turbot trip is observed.

Response: Observers are placed on a vessel based on what the captain intends to catch during that trip. However, the Catch Accounting System, on which the fishery definitions in the LOF are based, does not use what the captain intends to catch as the target species for that trip. Instead, the target species for that vessel's trip is determined based on what the vessel actually catches in its hauls. Thus, if a captain is targeting flatfish, but the catch is predominantly turbot, that vessel is assigned to the turbot fishery.

The percent of observer coverage will reflect a combination of the coverage on those vessels whose captains state that they are targeting turbot and actually catch turbot, and the coverage on vessels whose captains state that they are targeting some other species, but catch predominantly turbot.

Comment 24: The figure of 7 percent reproduction rate for humpback whales is inflated.

Response: The best available scientific information indicates the rates of increase of humpback whale populations range from 7 percent to 10 percent for the North Pacific population, and 8.8 percent to 14 percent for other populations of humpbacks. The estimate of 7 percent is based on a study on the humpback whales in the Hawaii breeding grounds (Mobley et al., 2001) and is believed to be a reasonable estimate of the current rate of increase of the population; thus, it is an appropriately conservative estimate of the maximum theoretical rate of increase for humpback whales for calculating PBR.

Comment 25: The SARs include figures that are 8 years old. The U.S. was a far different place 8 years ago than now, and the SARs should be updated to include more recent information.

Response: The information in the SARs on abundance, trends in abundance, and human-related mortality are the best information currently available for that stock. In many cases, the ''best information'' has been collected within the past 5 years. However, there are other situations in which the ''best information'' was collected 8 or more years ago. This information will be retained in the SARs until better information is collected, or until there is a strong, specific reason for discrediting the information.

Comment 26: For all Alaska stocks, the reports should clarify the meaning of ''N/A'' for observer coverage. Presumably, N/A indicates that the exact level of observer coverage is unknown and that some portion of the fishery was observed.

Response: The use of N/A in the tables summarizing incidental mortality and serious injury means that data are not available. Data may not be available due to one of two situations: (1) The fishery was observed, but an estimate of the level of coverage was not available when the SAR was developed or (2) the data result from logbooks, self-reports, or strandings, so listing observer coverage is not possible. NMFS will explore alternative methods of distinguishing between these situations in the 2006 SARs.

Comment 27: Until observer programs are instituted for Southeast Alaska fisheries, the status of many stocks of marine mammals in Southeast Alaska cannot be adequately evaluated.

Response: NMFS agrees. Over time, NMFS plans to implement observer programs for all fisheries in Southeast Alaska that are currently known or suspected to have a moderate level of serious injury and mortality of marine mammals as future funding levels allow.

Comment 28: The report for the western stock of Steller sea lions should explain why pups and non-pups were counted separately, using different methods. The report should clarify whether pups were counted at all rookeries or if, in fact, some rookeries were not counted (resulting in a minimum count).

Response: The SAR will be updated to reflect this request in 2006.

Comment 29: It is not clear how many Steller sea lions that strand have bullet wounds or whether these mortalities/serious injuries are reported under subsistence hunting (i.e. struck and lost). They are not listed under potential fishery interactions.

Response: Steller sea lions with bullet wound are occasionally observed and reported to NMFS. Subsistence harvest of Steller sea lions by Alaska Natives is permitted, and the numbers of animals killed or struck but lost are reported in the SARs in the ''Other mortality'' section. Shooting Steller sea lions, outside of a subsistence harvest, is a direct violation of the Marine Mammal Protection Act and the Endangered Species Act (ESA) and may be subject to legal action. The NOAA Office for Law Enforcement successfully prosecuted two illegal shootings of Steller sea lions in 1998. However, the agency assumes, unless proven otherwise, that Steller sea lions observed with bullet wounds are those ''struck but lost'' in the course of the legal, Alaska Native subsistence harvest. The Alaska SRG has recommended changing this practice, as Steller sea lion observed with bullet wounds may not have been targeted by the subsistence harvest. NMFS will consider how best to report information about Steller sea lions observed with bullet wounds in the 2006 SARs.

Comment 30: The minimum count for the eastern stock of Steller sea lions is only 2.5 percent lower than the population estimate based on pup counts and a correction factor. Either the minimum count includes almost every individual, which seems unlikely, or the correction factor applied to pup counts is unexpectedly low.

Response: An abundance estimate based on a pup count multiplied by the correction factor is likely to be an underestimate because the correction factor is known to be conservative because factor is based on a stable population (0 growth rate). The eastern Steller sea lion stock is actually growing about 3 percent per year.

Comment 31: The counts in Table 4 for the SAR for the eastern stock of Steller sea lions are presumably uncorrected counts, which should be indicated in the text.

Response: The term ''counts'' is used consistently to refer to raw, uncorrected counts of individuals. It is not necessary to change the text for the caption of Table 4.

Comment 32: The 4.5 expansion factor that has been applied to the count of northern fur seal pups in order to estimate the population size is based on a historical sex-age distribution that may no longer be valid. The factor should be validated or updated, or an alternative method for estimating population size should be used.

Response: The 4.5 expansion factor for northern fur seals is based on an analysis of the life history of the population many years ago; NMFS agrees that this expansion factor should be updated. In 2005, NMFS initiated an expanded study on northern fur seals in order to determine the cause of the stock's decline. The results of these studies may, within several years, allow NMFS to update the expansion factor.

Comment 33: Under ''Fisheries Information'', the SAR for northern fur seals indicates that several fisheries which are known to interact with northern fur seals have not been observed. For that reason, the resulting fishery mortality estimate should be considered an underestimate. However, the text currently states that the estimate is ''conservative'', which can been interpreted in different ways and may be misleading in a management context. Consider revising the text to avoid confusion.

Response: The text will be reviewed and revised in a future draft if appropriate.

Comment 34: The subsistence harvest of juvenile male northern fur seals has not been terminated, as the text of the SAR suggests.

Response: The commenter is correct. Juvenile male northern fur seals are taken in an Alaska Native subsistence harvest. The SAR will be reviewed and updated in 2006 to eliminate confusing language.

Comment 35: The SARs for harbor seals have not been updated since 1998 and should be updated to include new

information, particularly new information on stock structure. If a decision on the stock structure is still forthcoming from the comanagement committee, the SARs should be developed to show prospective stocks. Until this action is taken, it is not possible to evaluate the status of harbor seals with regard to fisheries, subsistence harvest, or other potential conservation issues.

Response: The SARs for Alaska harbor seals are currently based on a stock structure that is known to be incorrect. NMFS is actively working with our partners in the comanagement community to identify groups of harbor seals that can be called ''stocks'' under the MMPA. Significant progress towards identifying stocks has occurred, and NMFS remains hopeful that stock structure can be revised soon. In the interim, the Alaska Scientific Review Group has recommended that the SARs for Alaska harbor seals be updated with new information on abundance and human-related mortality levels using the existing stock structure. NMFS will make these updates in the 2006 SARs.

Comment 36: At this time, there are no current abundance estimates for spotted seals, bearded seals, ringed seals, or ribbon seals. In addition, there is a subsistence harvest of each species, and each species is very likely to be vulnerable to changes in climate. NMFS should develop and implement the research needed to provide a better, more reliable, basis for management of these 4 species of ice seals.

Response: NMFS agrees that research is needed to provide a better basis for management of these species. Research project were initiated in 2005 using funds appropriated under the ''Alaska Seals and Steller Sea Lions'' line item. These studies will be continued in FY 2006, as funding allows.

Comment 37: The 43–72 percent population declines described for ringed seals are substantial and are cause for concern. Although these may reflect changes in survey timing, they may also be a result of a real decline in the population. There is a longstanding concern about the lack of research on ringed seals.

Response: NMFS agrees. At this time, it is not possible to distinguish between the possibility that the differences in counts are due to changes in abundance or changes in methods.

Comment 38: The Moulton *et al.* (2002) study that documents lack of impact of industrial activity on ringed seal distribution in the Beaufort Sea may be relevant only in areas of low ringed seal density. The SAR should be amended to state that the results may not apply throughout the range of ringed seals.

Response: NMFS updated the text to acknowledge that the study may not be applicable throughout the range of the species.

Comment 39: The correction factor used for estimating abundance of the Beaufort Sea stock of beluga whales appears to be arbitrary in spite of the existence of empirically derived correction factors. The basis for rejecting the empirically derived factors was not explained. The use of an arbitrary correction factor results in an underestimate of the variance of the population estimate because the uncertainty about the correction factor is not incorporated into the variance of the abundance estimate. As a result, the minimum population estimate of the stock (Nmin) may be overestimated.

Response: The correction factor (CF) used for estimating abundance of the Beaufort Sea stock of beluga whales was a consensus opinion from a workshop on the Beaufort Sea beluga (see Duvall, 1993), which reviewed data from tagging experiments done in Bristol Bay and a paired observer study conducted on the population in 1985. This CF has been used with subsequent survey data to maintain consistency. Although the CF of 2 appears to be arbitrary, it was intended to be conservative and, in fact, low compared to empirically derived CFs for similar surveys ranging from 2.75 to 3.5. Although variance in the abundance estimate may be underestimated, the low CF reduces the likelihood that Nmin is an overestimate.

Comment 40: The use of a 1.0–recovery factor for the eastern Chukchi Sea and Bering Sea stocks seems unwarranted because population estimates are poor and it is difficult to conclude that the population is stable. A more precautionary approach would be to classify the status of the stock as ''unknown'' and use the default recovery factor of 0.5.

Response: NMFS will consider this comment when the SAR for this stock is next reviewed and will discuss it with the SRG.

Comment 41: As stated in previous years, NMFS should use a recovery factor of 0.1 in the calculation of the PBR level for the Cook Inlet beluga whale stock. Use of a recovery factor of 0.3 is more inappropriate now than it was in 2001 because the population has shown no signs of recovery despite only a few known subsistence takes during the past seven years.

Response: NMFS acknowledges that the available data indicate that no recovery of this population is evident, despite careful regulation of the subsistence harvest. NMFS has initiated a status review of this stock to evaluate whether the stock should be listed as ''endangered'' or ''threatened'' under the ESA and will consider changing the recovery factor once the status review is completed.

Comment 42: The SAR for the eastern North Pacific Alaska resident stock should indicate whether shooting of killer whales is still a problem in Alaska.

Response: NMFS will review the report and may (as appropriate) update the text in a future revision to reflect the current state of knowledge on this issue.

Comment 43: Mortality estimates for the eastern North Pacific, Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock of killer whales approach the PBR level for this stock and would exceed the PBR level if the estimate from the line-transect surveys was used for Nmin in lieu of the Nmin from photo-identification. The potential for unsustainable mortality suggests a high priority for further research on this stock of transient killer whales.

Response: NMFS has implemented a large killer whale research program for the past three years and believes that this program will provide the information needed to determine whether the level of serious injury and mortality incidental to commercial fishing is sufficiently high to be a conservation concern.

Comment 44: The table of strandings and entanglements provided for the gray whale SAR is useful, and similar tables should be considered for other stocks.

Response: NMFS agrees, and will continue to provide this detail on strandings and entanglements for those stocks, such as gray whales, central North Pacific humpback whales, and bowhead whales, where the majority of information on human-related serious injury and mortality is gleaned through stranding reports.

Comment 45: Noise pollution and low-frequency sonar are listed as concerns for humpback and beaked whale stocks, but should also be listed as concerns for other species that are likely to be affected by anthropogenic noise.

Response: The intent of the habitat sections for SARs is to provide information on issues that are, or highly likely to be, habitat concerns. Potential impacts of anthropogenic noise are appropriately identified for beaked whales, as beaked whales are known to have died after coming in contact with certain types of sound. Similarly, humpback whales in Hawaii were documented to exhibit subtle changes in behavior in response to low frequency

sound, and this is documented in the SARs for this species. Extrapolation of this information to other species for which little information exists on the impacts of sound, or any other anthropogenic impact, is not appropriate.

Comment 46: The western North Pacific humpback SAR should include text describing the SPLASH humpback whale research program.

Response: NMFS agrees and will update the text in the next revision of this SAR.

Comment 47: In the analysis of marine mammal bycatch data, mortalities that occurred in non-observed fishery sets should not be combined with mortalities that were observed because this will exaggerate the number of takes with a procedure that is biased and scientifically unsound.

Response: See response to Comment 19 in the final List of Fisheries (71 FR 247; 4 January 2006) for a very detailed response to the same comment. The analysis of bycatch is stratified into many different strata, including fishery, statistical fishing area, etc. Estimates of bycatch are calculated for each individual stratum using data from monitored hauls. However, if the observer reported a serious injury or mortality incidental to a non-monitored haul, and there were no serious injuries or mortalities from monitored hauls in that strata, the report in a non-monitored haul is used as the estimate of serious injury and mortality for that stratum. Data from non-monitored hauls are not extrapolated using the ratio estimation approach but are simply added to an extrapolation using observer data from monitored hauls.

Comment 48: NMFS calculates the confidence limits for the estimate of marine mammal bycatch using a formula that results in negative numbers. This is not a reasonable result, as there cannot be a negative bycatch of marine mammals.

Response: See response to Comment 16 in the final List of Fisheries (71 FR 247; January 4, 2006). NMFS has revised the formula used for calculating confidence limits. The recent change from the use of the normal distribution to the use of a natural-log transformation to eliminate the occasional problem of having a negative lower confidence limit around an estimated bycatch rate.

Comment 49: In the draft 2005 SARs, NMFS asserts there are new, discrete populations of resident killer whales in Alaska. NMFS fails to provide the appropriate and necessary analyses to support this determination.

Response: It is standard procedure for SARs to summarize and provide conclusions from primary analyses that are reported elsewhere. It would not be appropriate to bring all the details of primary analyses into the SARs. NMFS, therefore, has provided the appropriate and necessary analyses through reference to scientific papers that confirm these are discrete populations. The draft SAR addresses these details by reference to the relevant published literature on this topic

Comment 50: NMFS' calculation of Nmin for the Alaska resident stock of killer whales is questionable. NMFS has excluded 600 photographs because the photographs have not been matched for population grouping. NMFS has excluded an additional 68 animals because the data are 10 years old. These decisions are arbitrary.

Response: The SAR refers to approximately 600 individuals photographed in studies by the North Gulf Oceanic Society. Analyses of those photographs were not finalized and have not been reconciled with the NMFS collection. It is likely there will be a large number of duplicates between these independent datasets. Therefore, it would not be correct to simply add the 600 to the total number of whales. Once the two datasets are matched and reconciled, it will be possible to add these data to the abundance estimate. The 10–year old data were excluded because there is no way of discerning whether any of those 68 whales are still alive; thus, NMFS has determined not to include them in the current estimate of Nmin.

Comment 51: The SAR for the Alaska resident stock of killer whales states that the population has been increasing at 3.3 percent annually for 18 years. It also states that NMFS lacks the data to determine if the population is increasing or decreasing and classifies the stock status as uncertain, assigning it a recovery factor of 0.5. Eighteen years of annual population increases is sufficient evidence of a population trend. This species should be assigned a recovery factor of 1.0.

Response: The draft 2005 SARS define the Alaska resident stock as resident killer whales occurring between central Southeast Alaska and the Bering Sea. The draft 2005 SARs cite an observed increase of 3.3 percent for the very small portion of the Alaska resident stock that is consistently seen in Prince William Sound in the summer. An observed rate of increase in a very small portion of the stock's range cannot be interpreted to apply to the entire stock and cannot be used to justify a higher recovery factor. When the entire range of the stock is considered, both the overall rate of increase and the status is considered ''unknown''. The guidelines for preparing SARs state that a 0.5 recovery factor is appropriate for stocks of unknown status. The Alaska SRG has recently reviewed the SARs for killer whale stocks and has not recommended an alternative recovery factor for any killer whale stock.

Comment 52: Table 30 in the Alaska resident SAR asserts that the BSAI Pollock trawl fishery had four estimated mortalities over 5 years, which translates to a mean annual mortality level of 0.61 animals. The same table indicates that the BSAI Greenland turbot fishery had three mortalities over 5 years, which translates to a mean annual mortality level of 0.6 animals. It is statistically not possible for fewer total mortalities to translate into the same mean annual mortality rate. NMFS' calculations of fishery related mortality levels are clearly erroneous.

Response: There is an error in Table 30 of the draft SARs, but no error in the underlying analysis. The estimated mortality for the BSAI pollock trawl fishery in 1999 was 1 (not 2) which translates to a 5–year average of 0.61. Data for the turbot longline fishery and the cod longline fishery (5–year average of 0.84 based on four mortalities) were correctly used; however, there was a typographical error in one table.

Comment 53: In the draft 2005 SARs, NMFS asserts there are new, discrete populations of transient killer whales in Alaska. NMFS fails to provide the appropriate and necessary analyses to support this determination. Serious questions exist regarding the extent of genetic variability and space time separation.

Response: The three transient killer whale populations have fixed mtDNA differences (which is a very strong difference) and also have significant differences in microsatellite nuclear DNA. These are conclusive results. As with the resident killer whales, NMFS has provided the appropriate and necessary analyses through reference to the scientific papers that confirm these are discrete populations.

Comment 54: The SAR admits that the stock has been increasing at 7–10 percent annually for many years. Given this increase, the abundance is 1.4–1.6 times the size of the early 1990s population. Thus, the Nmin value for this stock is greatly underestimated.

Response: Although this comment was in a section of a public comment letter entitled ''Eastern North Pacific transient stock of killer whales'', NMFS suspects that the comment refers to the central North Pacific stock of humpback

whales and responds accordingly. The Nmin for the central North Pacific stock of humpback whales is based on data from the early 1990s because that was the last time that photographs were taken of humpback whales throughout the range of humpback whales in the North Pacific Ocean. It is true that the abundance estimate is likely conservative, as the stock is known to have increased 7 percent annually from 1993–2000. A major research effort on North Pacific humpback whales was initiated in 2004 and will conclude in 2006. This research effort will likely result in important information on abundance and stock structure of humpback whales in the North Pacific, both of which will have implications to the Nmin value. NMFS will update the Nmin for this stock when the new information from the recent efforts is published.

Comment 55: The draft stock assessment for the central North Pacific stock of humpback whales notes that there may be as many as six subpopulations of humpback whales on the wintering grounds. The draft SAR for the western North Pacific stock of humpback whales admits there is considerable overlap between the ranges of the central North Pacific and western North Pacific stocks. Further, NMFS admits the agency is unable to determine to which stock a sighted whale should be assigned. If NMFS is unable to determine to which stock a whale should be assigned, how will NMFS arrive at a defensible population estimate of the individual stocks?

Response: Although there is considerable overlap of the western and central stocks of North Pacific humpback whales on their feeding grounds in Alaska, there is essentially no overlap on their winter/breeding grounds in Japan and Hawaii, respectively. Thus, the abundance estimates for these stocks will likely come from data collected on their winter grounds. Because the stocks are currently identified on the basis of their winter grounds, these abundance estimates are appropriate. It is difficult to assign some individual whales, sighted in some areas of Alaska, to their correct winter/breeding area stock. The basin-wide humpback whale research project mentioned in the response to Comment 54 is an on-going research program designed to help answer these types of questions. Results from this research will be incorporated into the SARs as soon as practicable.

Comment 56: The BSAI pollock trawl fishery and the Bering Sea sablefish pot fishery each have one estimated mortality over the past 5 years, but the mean annual mortality rates are different. Such a result shows the flaws in the NMFS methodology and conclusions.

Response: There is a difference in the analytical approach for these two fisheries that explains why a single mortality in 5 years results in a different estimated annual mortality level for the two fisheries. The single mortality/serious injury in the Bering Sea sablefish pot fishery was not seen during a monitored haul; therefore, it is a minimum count of the mortality/serious injury that occurred incidental to this fishery and is simply divided by five to obtain an average annual mortality rate over 5 years. Because the mortality in the pollock trawl fishery was observed in a monitored haul, the mean annual mortality level is calculated by a more complicated formula that takes into consideration the observer effort in each year, 1999–2003. Thus, the analysis appropriately accounts for differences in the types of data available and adjusts the formulae accordingly.

Comment 57: Tables 42, 43, and 44 in the report that describe the level of mortality and serious injury of central North Pacific humpback whales do not provide any way to arrive at the estimated minimum fishery induced mortality level of 2.6 for the northern portion of the stock, and 2.7 for the southeast portion of the stock. Further, Table 42 claims that the whales involved in a commercial fishery interaction were from the central stock, while Table 44 admits that the stock identification is unknown. Moreover, the SAR attributes the same mortality to both the northern portion of the stock and to the southeast Alaska portion.

Response: NMFS agrees that it can be challenging to follow the compilation of information on serious injuries and mortalities of humpback whales in the central North Pacific stock. Table 42 includes the information obtained for observer programs. Table 43 includes the raw data on individual strandings and entanglements of humpback whales. Table 44 summarizes the stranding and entanglement data. Table 45 adds the values in Table 42 and the values in Table 44 to provide an estimate of the total serious injury and mortality of central North Pacific humpback whales. The heading ''Hawaii summer feeding area unknown'' in Table 43 is misleading and has been updated. It is not known whether the summer feeding area for these individuals is the northern portion or the southeast portion of Alaska, but it is quite certain that humpback whales in Hawaii are part of the central North Pacific stock. Because it is not known whether these animals summer regularly in the northern portion or the southeast portion of Alaska, the mortalities are assessed as if they came from either portion. Also, see response to Comment 14.

Comment 58: The discussion of N*min* for the western North Pacific stock of humpback whales states that N*min*is conservative because the N*min* is 367 animals, yet the results of summer surveys in the Bering Sea indicate the presence of over 1000 animals.

Response: The abundance estimate on which the N*min* was based is from the waters off Japan, where the western stock does not mix with other stocks. The estimate of 1000 humpback whales in the Bering Sea reflects a count of animals from both the western and central stocks. The N*min* value of 367 is the most appropriate N*min* at this time and will be updated when the results of recent humpback whale research are available. Comparisons to the estimate of 1,000 humpback whales in the Bering Sea have been struck from the SAR as this refers to a mixed-stock abundance estimate.

Comment 59: The western humpback whale stock has increased 7 percent annually, providing evidence that the NMFS estimates are low and should be increased.

Response: The reported 7–percent increase was estimated for the Central North Pacific rather than the Western North Pacific stock of humpback whales. There is insufficient information available to estimated the trend of the Western North Pacific stock of humpback whales. Accordingly, there is no basis to increase the abundance estimate for the Western North Pacific stock.

Comment 60: The SAR for the western stock of Steller sea lions includes the same types of inaccuracies identified in other SARs. For example, the estimated mortality for 5 years for the BSAI flatfish trawl fishery is 14 animals over the 5 year period. The average is 2.8 yet the NMFS chart asserts the mean annual mortality is 3.35. There are similar mathematical discrepancies in virtually every computation.

Response: The mean annual mortality rates based on observer data presented in the SARs are calculated using a stratified model and pooled effort. Thus, the estimated annual mortality rates for a specific 5–year period cannot be calculated simply by adding the estimated mortality levels for each year and dividing by five.

Comment 61: The SAR for the western U.S. stock of Steller sea lions asserts that Nmin is 38,513. The SAR also states

that this estimate excludes the number of Steller sea lions in Russia, which are technically part of this stock. Until these are designated officially as a separate stock, NMFS cannot exclude these from the PBR level.

Response: The commenter is correct that the western stock of Steller sea lions, as currently described, does include Steller sea lions in Russia and does not include counts from Russia. Counts at Russian sites have not been included in the SAR for three reasons: (1) It is consistent with the guidelines for developing the SARs, which state that, for a non-migratory situation, the PBR level should be calculated based on the abundance of the stock residing in U.S. waters, (2) the methods for counting Steller sea lions are not consistent between countries, and (3) available information, which will soon be published in peer reviewed literature, indicates that there is a decisive stock boundary just west of the Commander Islands, such that the animals found on the Commander Islands would belong to the same stock as the animals on the Aleutian Islands. Accordingly, NMFS has been basing management decisions to conserve Steller sea lions by focusing on the dynamics of Steller sea lions occurring in U.S. waters. NMFS will consider formal separation of the western stock of Steller sea lions in the 2006 SARs.

Comment 62: The SAR for the western stock of Steller sea lions states that 2.2 percent of all interactions between fisheries in the Gulf of Alaska and sea lions are with California sea lions. Despite this, NMFS counted every interaction with a sea lion as a Steller sea lion interaction. The overall serious injury/mortality rate should be reduced by 2.2 percent to account for the proportion that involves California sea lions.

Response: The statement in the SAR refers to the frequency of logbook reports of California sea lions. Because California sea lions can be confused with Steller sea lions and because California sea lions are extremely rare in Alaska, logbook reports of California sea lions in Alaska are assumed to be erroneous, and all ''sea lions'' are counted as Steller sea lions. Fishery observers are trained to differentiate between California sea lions and Steller sea lions. Modifications to observer data to account for possible confusion by untrained personnel submitting logbook reports culd underestimate mortality and serious injury of Steller sea lions.

Comment 63: The SAR for western Steller sea lions uses information from an observer program in 1990–91 to provide an estimate of mortality in the Prince William Sound salmon drift gillnet fishery. NMFS should place observers to monitor this fishery to provide more up-to-date information on take levels.

Response: NMFS has a plan to rotate an observer program among different Alaska state fisheries with known, moderate levels of marine mammal bycatch. Current resources limit observer effort to a single fishery each year. At this rate, it will take over 20 years to observe all state fisheries in Alaska with a documented level of take. In 2006 and 2007, the Yakutat set and drift gillnet fisheries will be observed. It is not yet known what the observer program priorities will be for 2008. NMFS will consider this recommendation, along with others, in setting priorities for future observer programs.

Comments on Atlantic Regional Reports

Comment 64: For gray seal, Western North Atlantic stock, the report indicates the recovery factor for this stock is 1.0 although the status of the population is unknown. A recovery factor of 1.0 may be appropriate, given that the stock seems to be increasing in U.S. waters; however, if NMFS is not confident that the stock is increasing, then the recovery factor should be 0.5, the default value for stocks of unknown status.

Response: The gray seal population is increasing in U.S. waters. This conclusion is based on aerial survey counts of pupping colonies off the coasts of Maine and Massachusetts and increases in the ''summer'' population located in eastern Nantucket Sound.

Comment 65: For harbor seal, Western North Atlantic stock, the 1997 abundance estimate provided in the text (30,617) does not match the estimate provide in Table 1 (30,990). The report also mentions recent tagging efforts but provides no findings.

Response: Typographical errors have been corrected. The 1997 abundance estimate (31,078) from the Gilbert et al., 2005 publication in Marine Mammal Science has been inserted into the report. A brief summary of 2001 radio tagging, which was used to obtain the 2001 survey correction factor, has been included into the report. Detailed tagging information is contained in another manuscript (Waring et al., Northeastern Naturalist, in press) cited in the 2005 SAR.

Comment 66: For fin whales, Western North Atlantic stock, the estimated mortality of 1.4 is not less than 10 percent of PBR (4.7); therefore, the level of mortality and serious injury is not approaching the Zero Mortality Rate Goal (ZMRG).

Response: The report has been revised to note that mortality and serious injury is not considered insignificant and approaching a zero mortality and serious injury rate.

Comment 67: For minke whale, Canadian east coast stock, it is not clear how the 1995 takes incidental to the pelagic gillnet fishery were estimated with a Coefficient of Variation (CV) of 0; this would seem possible only if NMFS had 100 percent observer coverage for that fishery in 1995.

Response: Observer coverage on the pelagic gillnet fishery in 1995 was 99 percent. NMFS, therefore, considers the observed mortalities and serious injuries to be an enumeration rather than a sample.

Comment 68: For long-finned pilot whale, Western North Atlantic stock, the data from the Kingsley and Reeves (1998) survey are not shown in Table 1 although the text suggests otherwise. As mentioned above for short-finned pilot whales, NMFS should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery to reduce the variability in take estimates and clarify the potential impact of this fishery on pilot whales.

Response: The 1995 data are not presented in Table 1 because they are older than 8 years. The observer coverage Mid-Atlantic trawl fisheries has increased over the last few years, although the coverage is higher in the NE than in the Mid-Atlantic for some trawl fisheries. The higher coverage levels will be reported in the 2006 SAR.

Comment 69: For white-sided dolphin, Western North Atlantic stock, the observed mortality in the bottom trawl fishery in 2003 was approximately 10 times higher than in other recent years, suggesting a potential problem for white-sided dolphins. Once the total mortality is estimated for 2003, it is very likely that the estimate will exceed the PBR for this stock. To address this concern, the mortality estimates for 2002, 2003, and the annual average mortality from 1999–2003 should be calculated. NMFS also should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery, which would help clarify the impact of this fishery on pilot whales.

Response: Updated mortality estimates for white-sided dolphins in the mid-water and bottom trawl fisheries will be included in the 2006 draft SAR. The observer coverage in the NE and Mid-Atlantic trawl fisheries has increased over the last few years, although the coverage is higher in the NE than in the Mid-Atlantic for some

trawl fisheries. The higher coverage levels will also be reported in the 2006 SAR.

Comment 70: For common dolphin, Western North Atlantic stock, the text indicates that the joint surveys overlapped spatially (from North Carolina to Maryland). The text should describe how the surveys were designed to avoid double-counting animals.

Response: The text has been revised t clarify that there was no spatial overlap in the surveys. The shipboard surveys covered separate geographic blocks in shelf break and slope waters. The aerial component of the northern survey extended to North Carolina, but the aircraft covered continental shelf habitat rather than shelf edge and deeper waters, which were surveyed by vessel in the southern effort.

Comment 71: For harbor porpoise, Gulf of Maine/Bay of Fundy stock, the estimated takes of 2,100–2,500 harbor porpoises in the Gulf of St. Lawrence gillnet fishery are worrisome, even if the estimates are unreliable. If the estimates are even close to accurate, they indicate a serious problem for harbor porpoise. It is not clear whether these estimates or any information from this fishery are included in the mortality estimate for the stock.

Response: The harbor porpoises in the Gulf of St. Lawrence are considered to be a different stock from the Gulf of Maine/Bay of Fundy stock, as is documented from genetic studies. Therefore, the Gulf of St. Lawrence takes are not included in the mortality estimate for the Gulf of Maine/Bay of Fundy stock.

Comment 72: For all Southeast Atlantic stocks, the reports should provide context for evidence of human interactions, particularly in cases with no indication of human interactions for stranded animals. For example, the reports should indicate how many stranded animals were too decomposed to make an assessment. The report on the western North Atlantic coastal morphotype stocks of bottlenose dolphins provides details of this sort.

Response: These details will be included in affected SARs beginning with the 2006 SAR.

Comment 73: The reports should indicate how many, if any, stranded bottlenose dolphins were coastal or offshore morphotypes and how many could not be identified as to morphotype.

Response: Determination of morphotype (based upon genetic analysis of tissue samples) is not routinely done throughout the range of this stock (i.e. the Atlantic coast) nor consistently through time. This constraint is noted in the text preceeding Table 4. NMFS is working with our partners in the stranding network to improve collection of tissue samples from all stranded bottlenose dolphin carcasses; however, analyses of of the samples (several hundred per year), is limited by available resources.

Comment 74: For bottlenose dolphin, Western North Atlantic coastal morphotype stocks, the CVs for population estimates are substantially greater than one, ranging from 15 to 111. If the estimates are truly that imprecise, then they are virtually meaningless and should not be reported. The reports should provide the total estimated mortality for each fishery, for all fisheries combined, and for each management unit. That information is necessary to assess the mortality with respect to PBR for each management unit.

Response: In the draft SAR, the CVs were reported as a percentage (that is, CV * 100). For example, a value of 15 (percent) reported in the draft is actually a CV of 0.15 when written as a proportion. The CVs reported in Table 1 are now reported as proportions to be consistent with other SARs. Tables 2 and 3, in combination, accomplish the goal of providing estimated mortality for each fishery, all fisheries combined, and for each management unit, due to the spatial segregation of the fisheries for which there are available bycatch estimates. The mid-Atlantic coastal gillnet fishery affects only the Northern Migratory stock, the Southern North Carolina stock, and the Winter Mixed stocks. The shark drift gillnet fishery affects only the Northern Florida and Central Florida stocks. Therefore the tables, as presented, document total estimated serious injury and mortality for each stock.

Comment 75: In the pygmy sperm whale (Kogia sima), Western North Atlantic, report, NMFS estimates that six Kogia sp. were taken in the pelagic longline fishery, which is twice the PBR (3) for the two species combined, suggesting that both species should be strategic. Currently, dwarf sperm whales are not considered strategic, and no takes of any Kogia sp. are listed in the dwarf sperm whale report.

Response: Pygmy sperm whales, identified to species, were caught by the pelagic long-line fleet in 1999–2000, as reported. It is appropriate to assign all these takes to this species, as opposed to splitting it among the two species, dwarf- and pygmy sperm whales because none of the latter were reported in the bycatch. This will be clarified in future reports.

Comment 76: NMFS estimates that 228 pilot whales were taken in 1999 incidental to the mid-Atlantic groundfish trawl fishery and zero whales were taken in other years. Low observer coverage in this fishery likely contributed to the large variability in annual estimates, but the possibility that the true annual take may be closer to 228 than to 0 merits serious concern. The Service should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery.

Response: The observer coverage in the NE and Mid-Atlantic trawl fisheries has increased over the last few years although the coverage is higher in the NE than in the Mid-Atlantic for some trawl fisheries. Those coverage levels and the information obtained will be reported in the 2006 SAR.

Comment 77: NMFS should provide information regarding which fisheries are monitored in the Gulf of Mexico, similar to the summaries provided for other regions. Based on interactions described in the Gulf of Mexico SARs, menhaden, gillnet and longline fisheries should be monitored closely.

Response: Appendix III, Part B includes information on fisheries operating in the Gulf of Mexico and the associated observer programs. NMFS administers a mandatory observer program for the U.S. Atlantic Large Pelagic Longline Fishery. The program has been in place since 1992 and randomly allocates observer effort over eleven geographic fishing areas proportional to total reported effort in each area and quarter. Observer coverage levels are mandated under the Highly Migratory Species Fishery Management Plan. The Southeastern Shrimp Otter Trawl Fishery Observer Program is a voluntary program administered by NMFS in cooperation with the Gulf and South Atlantic Fisheries Foundation. The program is funding and project dependent; therefore, observer coverage may not be randomly allocated across the fishery. Fisheries interactions are reported in Table 2 of each SAR.

Comment 78: For bottlenose dolphin, Northern Gulf of Mexico continental shelf stock, the scientific support for defining this management unit is not clear from the report, which suggests that dolphins on the continental shelf may include a mix of coastal and offshore stocks of dolphins.

Response: The stock structure for the northern Gulf of Mexico bottlenose dolphins has not been revised since its inception in 1995. This stock structure was based on assumptions concerning oceanography or habitat and on analogy with biological studies in and near

Sarasota, FL. An expert panel reviewed this stock structure in 2000 and recommended retaining the current stock structure until there is scientific support for changing it.

Comment 79: At least one false killer whale, Gulf of Mexico stock, was killed as a result of human interactions (the 1999 stranding) within the 1999–2003 period evaluated in the report, resulting in at least 0.2 takes/year. If that observed rate is adjusted to account for the likelihood that stranding records underestimate actual takes, the rate could exceed 10 percent of PBR (0.61). Therefore, it seems inappropriate to conclude that false killer whale takes are approaching the ZMRG.

Response: NMFS agrees that incidental mortality of this stock may be underestimated and that the conclusion may be incorrect. NMFS and the appropriate SRG jointly evaluate SARs prior to release for public review and comment and did so in this case. NMFS and the SRG will evaluate the appropriateness of the conclusion at the next meeting (currently scheduled in January 2007), and, if necessary, NMFS would alter the conclusion in the next revision of the affected SAR.

Comment 80: The reports for beaked whale stocks in the Gulf of Mexico should be revised to clarify the relationship of the various population estimates, particularly the estimate for unidentified Ziphiids. For example, it seems that the total abundance of all beaked whales would be the sum of the estimates for Cuvier's beaked whales (95), *Mesoplodon* sp. (106), and unidentified Ziphiids (146), or 347 total beaked whales. Similarly, the total abundance of Cuvier's beaked whales could be as large as the sum of the estimates for Cuvier's beaked whales. The reader can infer the relationships, but minor text edits would provide clarity.

Response: The Gulf of Mexico SARs will be modified in the 2006 SAR for consistency with the Atlantic U.S. coast SARs, to include combined estimates of undifferentiated beaked whales.

Comment 81: For pygmy Sperm whale, Northern Gulf of Mexico stock, the report should indicate whether any stranding showed evidence of human interactions.

Response: The report has been revised to include the number of strandings with evidence of human interaction.

Comments on Pacific Regional Reports

California Harbor Seal

Comment 82: Correction factors for harbor seal haulout behavior should be standardized throughout NMFS. The Commission also mentioned the desirability of having satellite or VHF radio tagged seal studies used to determine haulout correction factors for aerial surveys.

Response: Correction factors for California harbor seal counts were specifically developed for surveys where counts are made during the peak molt season. In other regions, harbor seal counts are made during peak pupping season, and the correction factors used for those counts reflect the specific count methodology used. The time series of California harbor seal counts reflects counts during peak molt and remain consistent with past years for the purpose of not introducing bias into the trend data. Correction factors based on VHF radio tagging are being developed by Dr. Jim Harvey at Moss Landing Marine Laboratories in California. Some of the data used in these correction factors were collected in tandem with harbor seal aerial surveys conducted by NMFS in 2004.

Comment 83: Figure 3, which shows annual net productivity and a non-significant regression on these data since 1982, should be removed.

Response: NMFS will keep the figure in the current SAR for this stock, as the data, though not significant, are still important in demonstrating how annual variability in net production can vary widely even for a well-studied stock.

Comment 84: It was not clear if the seal shootings mentioned in the draft SAR were seals that were shot at sea and drifted to shore or whether they were shot while ashore. Such shooting is evidence for the need of increased enforcement.

Response: It is difficult to determine the geographic origin of shootings in harbor seals (or other marine mammals), as carcasses are often decomposed, and it is unclear how long a carcass may have been on the beach. NMFS agrees that increased enforcement would benefit the conservation of marine mammals and other living marine resources. When additional resources are available, NMFS will expand enforcement efforts along with other aspects of marine mammal conservation.

Comment 85: Observers should be placed in the ''large mesh drift gillnet fishery'' that takes harbor seals.

Response: The comment actually refers to the small mesh set gillnet fishery for halibut and angel shark. NMFS agrees that having regular observer coverage in many fisheries would enhance the ability to assess the status of marine mammals (see response to Comment 9 regarding a requirements plan for protected species stock assessment); when resources are available to support such observers, NMFS will place them in the fishery.

Comment 86: The report for Southern Resident Killer Whales should include information about the population viability analyses that were conducted to support the proposal to list the stock as threatened.

Response: The analyses are described in full in the reports of the status reviews for this stock of killer whales (one in 2002 and a second in 2004); these reports are cited in the SAR. The purpose of the SAR is to present a brief summary of the status of the stock with emphasis on abundance, trend, human-caused mortality and serious injury, and status. Each report contains an extensive list of literature cited to guide interested readers to the details supporting the text in the SAR. In this case, interested readers may read the status review for a discussion of the analyses used in assessing the ''species'' status under the ESA. The reports of the status reviews are available on the Internet at the following address: *http://www.nwr.noaa.gov*, under the tabs, ''Marine Mammals'' and ''Killer Whales''.

Dated: April 28, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–6766 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033006B]

Atlantic Highly Migratory Species; Scientific Research Permit

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

ACTION: Notice; request for a scientific research permit; request for comments.

SUMMARY: NMFS announces the receipt of a request for a scientific research permit (SRP) to survey and determine abundance and distribution of pelagic sharks, inject pelagic sharks with tetracycline for age validation studies, track the survival and movement of Highly Migratory Species (HMS) with conventional and satellite pop-up tags in the Atlantic Ocean, and collect biological samples. While this research will occur in waters from the Gulf of Maine to Delaware, NMFS invites comments from interested parties on

this SRP request with regards to tagging and biological sampling of HMS (sharks, blue and white marlin, and bluefin and yellowfin tuna) in the Northeastern United States closed area.

DATES: Written comments on the application for a scientific research permit must be received by 5 p.m. on May 18, 2006.

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

- Email: *SF1.033006B@noaa.gov*. Include in the subject line the following identifier: I.D. 033006B.
- Mail: Margo Schulze-Haugen, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on SRP Application.''
- Fax: (301)427–2590

FOR FURTHER INFORMATION CONTACT: Jackie Wilson, by phone: (404)806–7622; fax: (404)806–9188.

SUPPLEMENTARY INFORMATION: Scientific Research Permits are requested and issued under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), which regulates fishing activities of tunas, swordfish, and billfish. Regulations at 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS. Scientific research is exempted from regulation under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), which regulates fishing activities of sharks.

The Northeast Fisheries Science Center (NEFSC) in Narragansett, Rhode Island has requested a SRP to conduct a research in Federal waters between Delaware and the Gulf of Maine (38°00′ N to 41°00′ N), including the Northeastern U.S. closed area. Previous shark surveys have occurred in this area prior to the implementation of the Northeastern U.S. closed area. This research would include a survey and tagging study of pelagic sharks, including shortfin mako sharks, *Isurus oxyrinchus*, common and bigeye thresher sharks, *Alopia vulpinus* and *A. superciliosus*, blue sharks, *Prionace glauca*, and porbeagle sharks, *Lamna nasus*, to obtain abundance and distribution information on these species. In addition, this research would include injecting tagged sharks with tetracycline for age validation studies. Biological samples would be taken from some species of sharks, including samples for age studies, stomach samples for food and feeding information, and reproductive samples. The data collected should support current research on thresher shark life history and blue shark and shortfin mako food habits.

The NEFSC would be conducting its research at historical survey locations. Prior research indicates that these species follow temperature gradients offshore from New Jersey and then move northward towards the Gulf of Maine. The survey would consist of a total of 20 sets over 11 days that proceed from south to north placing sets at the shelf, slope, northwall, and Gulfstream stations at 50 mile intervals coincident with oceanographic canyon stations that were sampled in earlier cruises. Approximately 10 sets will be placed within the Northeastern U.S. closed area. This research would also compare previous catch data with catch rates of these species using 9/0 (#40) Japanese tuna hooks to catch rates using 16/0 non-offset circle hooks, and catch rates and bait retention with 18/0 non-offset barbless circle hooks.

While the NEFSC would be fishing primarily for sharks, the researchers would use Southeast Fisheries Science Center tags to tag any live, incidentally caught Atlantic blue marlin, *Makaira nigricans*, and white marlin, *Tetrapturus albidus*. In addition, in collaboration with Dr. Molly Lutcavage from the University of New Hampshire, the NEFSC would deploy pop-up satellite archival tags (PSATs) on any live, incidentally caught bluefin tuna, *Thunnus thynnus*, and yellowfin tuna, *Thunnus albacares*. The timing of the survey is seasonally early in terms of billfish availability, and bycatch rates are expected to be very low since surface water temperatures will likely be too cold for billfish and sea turtles on the vast majority of the stations. While bluefin tuna may be incidentally captured if a survey station is located within a warm core ring, the number caught will probably be very low because sets are shorter in duration, the amount of gear set is about half the size of a commercial set, and it is unlikely that there would be more than two stations within rings on this cruise. If the researchers catch five bluefin tuna and/or three loggerhead or leatherback sea turtles on a given set, they will retrieve the gear and move out of the area. These oceanographic conditions have been surveyed in the past, and this sampling opportunity might allow for critical PSAT deployments prior to the inshore migrations of bluefin tuna. These deployments would provide critical data on bluefin tuna behavior during the migratory transition from offshore to inshore feeding grounds.

For each fish caught and tagged, the researchers would record species, estimated length and weight, and GPS location in addition to sea surface temperature, and any other data archived by the PSATs. These data would be used for migration studies on billfish, bluefin tuna, and yellowfin tuna. For all incidental mortalities, data would be collected, such as length, weight, samples for isotope work, otolith and aging samples, blood samples, and gonad samples. However, because the researchers would be targeting shark species, few incidental mortalities of other HMS are expected from these surveys based on previous survey results. Based on past data for the month of June and the estimated fishing effort for the 11 day cruise (20 total sets of 400 hooks per set for a total of 8,000 hooks), the researchers anticipate that they will catch 812 blue sharks, *Prionace glauca*, 32 sandbar sharks, *Carcharhinus plumbeus*, 12 shortfin mako sharks, *Isurus oxyrhincus*, nine swordfish, *Xiphias gladius*, five thresher sharks, *Alopias vulpinus*, two dusky sharks, *Carcharhinus obscurus*, one yellowfin tuna, *Thunnus albacares*, one porbeagle shark, *Lamna nasus*, one tiger shark, *Galeocerdo cuvier*, one bluefin tuna, *Thunnus thynnus*, and one hammerhead shark, *Sphyrna* spp.

The research would be conducted from May 30, 2006, through June 9, 2006, throughout the area mentioned above. Research would be conducted onboard the National Oceanographic Atmospheric Administration's (NOAA's) Fisheries Research Vessel, the Delaware II (R–445). Collection of HMS would occur with traditional Yankee pelagic longline gear consisting of a gangion of approximately 6 feet (1.83 m) of 0.125–inch (0.320 cm) diameter stainless wire leader attached to 18 feet (5.49 m) of 0.25–inch (0.640 cm) diameter braided nylon line with a stainless steel line clip at the nylon end. Approximately 133, 16/0 non-offset circle hooks would be alternated with 133, 9/0 (#40) Japanese tuna hooks, and 134, 18/0 non-offset barbless circle hooks for a total of 400 hooks per set. Hooks would be baited with mackerel. The mainline would consist of 0.31 inch diameter braided nylon or monofilament with polyform floats with five fathom droppers attached to the floats would be used at 10 hook intervals to support the longline, and each end of the longline would be marked with a both a polyform float and a 20–foot (6.10 m) staff buoy with radar reflectors, flashers (at night), and weights for stability. The soak time would vary, but would be no more than

a couple of hours to minimize incidental mortalities of non-target species.

Sea turtle handling and release equipment and instructions will be onboard the vessel at all times while engaged in this research activity. Additionally, the research team is trained and experienced in sea turtle handling and release techniques. Past research has also associated sea turtle interactions and other bycatch species with certain oceanographic features, such as warm core rings. Because the goal of this research would be to tag and collect information on the abundance and distribution of sharks, the researchers would limit their activity in these areas to reduce potential interactions with sea turtles and other non-targeted species.

Based on NMFS' initial review, NMFS believes that this research would be excluded from the requirement to prepare either an Environmental Assessment or Environmental Impact Statement pursuant to the National Environmental Policy Act because it is of limited size and magnitude and is not expected to have significant effects individually or cumulatively on the environment. As noted above, limited numbers of incidental interactions and/or mortalities are anticipated to occur while conducting this research. While scientific research is not regulated under the Magnuson-Stevens Act, NMFS would track and monitor all sources of mortalities for sharks. Any mortalities of ATCA regulated species (i.e., billfish and tuna) would be counted against the appropriate quotas, and active measures will be taken to minimize interactions and mortalities of these non-target species. Further, all fish tagged would be released alive, with minimal or no post-release mortality anticipated. However, if any HMS die during the collection and/or tagging process, age structures (otoliths), stomachs, blood samples, samples for isotope work, and reproductive tissues would be sampled.

This research may benefit fishery managers and scientists by providing additional data on the importance of the Northeastern U.S. closed area ecosystem in the management and conservation of HMS in the Atlantic Ocean.

The regulations that would prohibit the proposed activities include requirements for permits and fees (50 CFR 635.4), vessel reporting (50 CFR 635.4), size limits (50 CFR 635.20), fishing in a closed area (50 CFR 635.21(c)(i)), hook requirements (50 CFR 635.21(c)(5)(iii)(C)), retention limits for bluefin tuna (50 CFR 635.23), commercial retention limits for sharks and swordfish (50 CFR 635.24), catch and release (50 CFR 635.26), commercial quotas (50 CFR 635.27), closures (50 CFR 635.28), possession at sea and landing (50 CFR 635.30), and VMS (50 CFR 635.69).

Authority: Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–6767 Filed 5–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Captioned and Described Educational Media: Selection, Closed Captioning, Video Description, and Distribution; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327N.

Dates: Applications Available: May 4, 2006.

Deadline for Transmittal of Applications: June 12, 2006.

Deadline for Intergovernmental Review: August 11, 2006.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $1,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Captioned and Described Educational Media: Selection, Closed Captioning, Video Description, and Distribution

Priority

This priority supports one cooperative agreement, for the selection, acquisition, closed captioning, video description, and distribution of free educational media through such mechanisms as a loan service. The educational media are to be used in classroom settings by students with hearing or vision impairments and teachers and paraprofessionals who are directly involved in elementary or secondary classroom activities for these students. This priority would ensure that students who have hearing or vision impairments will benefit from the same educational media used to enrich the educational experiences of students who do not have hearing or vision impairments.

The project must:

(a) Develop strategies and procedures to be used in identifying program titles that meet the needs of elementary and secondary schools and submit lists of these program titles to OSEP for approval.

(b) Obtain media from producers and distributors identified under paragraph (a) for screening, evaluation, and, if necessary, closed captioning and video description. After screening and evaluating these media, select those that closely match the needs of elementary and secondary schools, taking into account the media most commonly used in school districts across the nation.

(c) Make arrangements with producers and distributors to purchase, distribute, and if necessary, closed caption and describe selected media, including distribution in alternate formats. Closed

captioned and described masters must be made available to producers and distributors in an effort to promote the use of closed captioned and described media.

(d) For selected media purchased by the grantee, prepare closed captions and descriptions in accordance with established industry guidelines and guidelines developed under this priority for closed captioned and described media, taking into account the grade level of the material as well as the age and vocabulary levels of the likely target audience.

(e) Establish guidelines for closed captioning and video description by service providers to ensure even and maximum participation of service providers.

(f) Establish and maintain a list of service providers that it has approved to provide closed captioning or video description under this priority.

(g) Develop and implement quality control guidelines and procedures for checking each media product after it has been closed captioned and described.

(h) Prepare up to 300 copies of each title, once it has been captioned and described, for distribution through the distribution system developed by the grantee under the project, including titles that are closed captioned and described in Spanish, consistent with the identified needs of elementary and secondary schools.

(i) Operate a system for distribution of captioned and described educational media, consisting of local and regional depositories and one central educational distribution center. Local and regional depositories may include State schools and public or private schools. Explore and utilize alternate delivery methods and materials, including programs and materials associated with new and emerging technologies, such as video streaming, and other forms of multimedia. During year two of the project, work toward phasing out local and regional depositories in favor of more efficient distribution methods that use new and emerging technologies.

(j) Establish computerized registration procedures, accessible via the Internet, that will be used to register users of the distribution system, schedule captioned and described media retrieval, and track and record consumer feedback and usage information.

(k) Prepare, update, and distribute copies of a catalog listing of all closed captioned and described media available for distribution as they become available. Catalogs must be made available online.

(l) Develop and maintain a comprehensive database containing information related to the availability of captioned and described educational media, information regarding the captioned and described media loan service, a list of closed captioning and description service providers, and procedures for applying for loan services. In addition, the project shall maintain a clearinghouse of information on the subject of captioning and description for use by consumers, agencies, corporations, businesses, and schools. All information must be accessible via the Internet.

(m) Establish an advisory group of at least eight members, consisting of one or more video producers and distributors, closed captioning and video description service providers, parents of students with hearing or vision impairments, and public and private school administrators, or educational personnel. This advisory group shall meet annually and develop and implement criteria for evaluating program activities, taking into consideration and incorporating the reactions and suggestions from consumers into the selection and closed captioning and description process, provide input regarding the usefulness of program activities and services, review effectiveness of the distribution system and make recommendations to ensure maximum effectiveness.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this review; and

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this

competition as follows: CFDA Number 84.327N.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 4, 2006.

Deadline for Transmittal of Applications: June 12, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 11, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Captioned and Described Educational Media: Selection, Captioning, Video Description, and Distribution-CFDA Number 84.327N is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Captioned and Described Educational Media: Selection, Closed Captioning, Video Description, and Distribution-CFDA Number 84.327N competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.327N),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.327N), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327N), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are

of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ernest Hairston, U.S. Department of Education, 400 Maryland Avenue, SW., room 4070, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7366 or by e-mail: *ernest.hairston@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8170.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 1, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–6762 Filed 5–3–06; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0023; FRL–8166–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (Renewal), EPA ICR Number 2071.03, OMB Control Number 2060–0522

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0023, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 *FR* 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2005–0023, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (Renewal).

ICR Numbers: EPA ICR Number 2071.03, OMB Control Number 2060–0023.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for printing, coating and dyeing of fabrics and other textiles were proposed on July 11, 2002 (67 FR 46028), promulgated on May 29, 2003 (68 FR 32172), and amended on August 4, 2004 (69 FR 47001). These standards apply to each existing, new or reconstructed printing coating slashing, dyeing or finishing of fabric and other textiles.

Owners or operators of the affected facilities must make the following notification: (1) Initial notification, (2) notification of initial performance test, (3) notification of compliance status. Affected sources must submit an initial compliance status report, and a startup, shutdown, and malfunction (SSM) plan. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 69 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Printing, coating, and dyeing of fabrics and other textiles facilities.

Estimated Number of Respondents: 140.

Frequency of Response: On occasion, semiannually and initially.

Estimated Total Annual Hour Burden: 20,821.

Estimated Total Annual Cost: $1,687,831 which includes $3,000 annualized capital start-up costs, $4,000 annualized O&M costs, and annualized labor costs of $1,680,831.

Changes in the Estimates: There is a decrease of 8,670 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

The decrease in burden from the most recently approved ICR is due to the requirements of the standard, which requires all existing sources to be in compliance within three years. Therefore, all existing sources are assumed to be in compliance, and the burden associated with the initial compliance efforts no longer exists.

There was a decrease in the capital/startup and operations and maintenance (O&M) costs from the previous ICR. The reason for this decrease is that we are accounting only for the number of respondents associated with the O&M costs, not for the number of annual reports used in the previous ICR.

Dated: April 27, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6748 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2005–0016; FRL–8166–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting Requirements Under EPA's National Partnership for Environmental Priorities (Renewal), EPA ICR Number 2076.02, OMB Control Number 2050–0190

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–RCRA–2005–0016, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: RCRA Docket (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Newman Smith, Office of Solid Waste (5302W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 703–308–8757; fax number: 703–308–8433; e-mail address: *smith.newman@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 20, 2005 (70 FR 75457), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2005–0016, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then

key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Reporting Requirements Under EPA's National Partnership For Environmental Priorities (Renewal)

ICR Numbers: EPA ICR No. 2076.02, OMB Control No. 2050–0190

ICR Status: This ICR is currently scheduled to expire on April 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA currently has an ongoing national program that, through source reduction, reuse, and recycling, encourages a reduction in use or the minimization of release of hazardous chemicals. Participation in the National Partnership for Environmental Priorities (NPEP) (previously the National Waste Minimization Partnership Program) is completely voluntary. Participation begins when the *Enrollment Form* is submitted and accepted by EPA. The form asks for basic site identification information as well as information on the company's chemical reduction goals under the program.

Once in the program, partners will also have an opportunity to complete and submit a *Success Story* when they have accomplished steps toward reaching the goal(s) established during their enrollment in the program. The *Success Story* also serves as the application for the NPEP Achievement Award. These Success Stories will be available on EPA's National Waste Minimization Program website. Each success story will describe a partner's waste minimization techniques, implementation problems, lessons learned, benefits, and relevant implications. These forms will enable the Agency to establish a partner's progress and the overall success of the program. They will also allow the Agency to recognize partner accomplishments in a formal manner, if appropriate (*e.g.*, at a recognition ceremony or by congratulatory letter).

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 16 hours per response for the Enrollment Form and 9 hours per response for the Success Stories. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those which generate, store, and treat hazardous waste.

Estimated Number of Respondents: 163.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 642.

Estimated Total Annual Cost: $0.

Changes in the Estimates: There is a decrease of 2,593 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The reason for the decrease is because in the original ICR EPA overestimated the number of partners that would be enrolled in the program. EPA also overestimated the amount of time it would take an enrollee to fill out and submit the enrollment form. For this renewal, EPA was able to canvas partners for more realistic burden estimates.

Dated: April 24, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6749 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0049; FRL–8166–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Reinforced Plastic Composites Production (Renewal), EPA ICR Number 1976.03, OMB Control Number 2060–0509

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0049, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–OECA–2005–0049, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Reinforced Plastic Composites Production (Renewal).

ICR Numbers: EPA ICR Number 1976.03, OMB Control Number 2060–0509.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for reinforced plastic composites (RPC) production operations and processes, published at 40 CFR part 63, subpart WWWW, were proposed on August 2, 2001 (66 FR 40323), and promulgated on April 21, 2003 (68 FR 19375). These standards regulate fugitive emissions from reinforced plastic composites (RPC) production operations and processes resulting from hazardous air pollutants (HAP) evaporating from the resins, gel coats, and cleaning solvents used in it. The owner or operator of a RPC manufacturing facility must control hazardous air pollutants (HAPs) by either limiting the HAP content of materials used and using non-atomized spray application in the manufacturing processes or by using an enclosure and add-on control device. This information is being collected to assure compliance with 40 CFR part 63, subpart WWWW.

Owners and operators of affected sources are subject to the monitoring, recordkeeping and reporting requirements of 40 CFR part 63, subpart A, the General Provisions, unless specified otherwise in the regulation. This rule requires sources to submit initial notifications, conduct performance tests if source is using an add-on control device, and submit periodic compliance reports. In addition, sources are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation if using an add-on control device; any period during which the monitoring system is inoperative; parametric monitoring data; system maintenance and calibration; and work practices to demonstrate initial and ongoing compliance with the regulation. Records of such measurements and actions are to be retained two years on-site of the required total five years. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of reinforced plastic composites (RPC) production operations and processes.

Estimated Number of Respondents: 504.

Frequency of Response: On occasion, semiannually, and initially.

Estimated Total Annual Hour Burden: 17,740.

Estimated Total Annual Cost: $1,454,143. which includes 0 annualized capital startup costs, $22,000 annualized O&M costs and $1,432,143 annualized labor costs.

Changes in the Estimates: The increase in labor burden to industry from the most recently approved ICR from 13,785 hours to 17,740 is due to adjustments. The increase in burden from the most recently approved ICR is primarily due to an increase from 435 to 488 in the number of existing sources, the assumption that all existing sources are in full compliance with the rule requirements, and because our estimates show that an average of 16 new respondents each year will become subject to this standard over the three-year period of this ICR.

The total annualized capital and operations and maintenance (O&M) costs increase from $15,807 to $21,680 is based on an increase in the number of sources. There are no startup capital costs since monitors are an integral part of the control equipment necessary to determine that it is operating properly. In addition, we have assumed that any new respondent has the software to develop the necessary spreadsheets for their recordkeeping system. The estimated annual O&M costs averaged over the three years of this ICR are associated with other costs, not associated with monitoring equipment. We estimate that file storage and photocopying costs per response are estimated at $12.50 per hour of clerical labor, and first class postage is estimated at $7.63 per response for mailing to regulatory agencies. Therefore, we estimate the annual O&M cost to be $21,680 based on 1,077 responses and an average of one hour of clerical work per response.

Dated: April 27, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6750 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091; FRL–8166–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Ambient Air Quality Surveillance (Renewal), EPA ICR Number 0940.18, OMB Control Number 2060–0084

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2002–0091, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by E-mail to: *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Lutz, Air Quality Analysis Division (C304–06), Environmental Protection Agency; telephone number (919) 541–5476; fax number: (919) 541–1903; e-mail address: *lutz.david@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 4, 2006, (71 FR 333), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–OAR–2002–0091, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Ambient Air Quality Surveillance (Renewal).

ICR Numbers: EPA ICR No. 0941.18, OMB Control No. 2060–0084.

ICR Status: This ICR is scheduled to expire on June 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule. These data and information are collected by various State and local air quality management agencies, and Tribal entities and reported to the Office of Air Quality Planning and Standards within the Office of Air and Radiation, U.S. EPA.

This ICR reflects revisions of the previous ICR update of 2002, and it covers the period of 2007–2009. The number of monitoring stations, sampling parameters and frequency of data collection and submittal is expected to remain stable for 2007–2009.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with National Ambient Air Quality Standards (i.e., ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM–10), ozone precursors, meteorological variables at a select number of sites and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The U.S. EPA and others (e.g., State and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes. Some of the more prominent uses include informing the public and other interested parties of an area's air quality, judging an area's (e.g., county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans (SIPs) in accordance with 40 CFR part 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The State and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the U.S. EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by

each State and local agency, in AQS electronic format where possible.

Although the State and local air pollution control agencies and tribal entities are responsible for the operation of the air monitoring networks, the EPA funds a portion of the total costs through Federal grants. These grants generally require an appropriate level of contribution, or ''match,'' from the State/local agencies or tribal entities. The costs shown in this renewal are the total costs incurred for the monitoring program regardless of the source of the funding. This practice of using the total cost is consistent with prior ICR submittals and renewals.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,134 hours per response, and 12,534 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local air pollution agencies and Tribal entities.

Estimated Number of Respondents: 168.

Frequency of Response: Data submissions are required quarterly, but may occur more frequently.

Estimated Total Annual Hour Burden: 2,105,714 hours.

Estimated Total Annual Cost: $173,153,415, which includes $51,197,172 annualized capital/startup costs, $10,936,320 annual O&M costs, and $111,019,923 annual labor costs.

Changes in the Estimates: There is a decrease of 298,892 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's consolidation of monitors into fewer sites, termination of unnecessary monitors, and more efficient procedures for measuring and reporting data.

Dated: April 24, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6751 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0022; FRL–8166–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Refractory Products Manufacturing (Renewal), EPA ICR Number 2040.03, OMB Control Number 2060–0515

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and costs.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0022, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance (OC), (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OECA–2005–0022, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Refractory Products Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2040.03, OMB Control Number 2060–0515.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the

related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for refractory products manufacturing were proposed on June 20, 2002, (67 FR 42107), and promulgated on April 16, 2003, (68 FR 8729). These standards apply to each existing, new, or reconstructed refractory products manufacturing facility.

Respondents must submit one-time notifications of applicability and reports on initial performance test results. Plants must develop and implement a startup, shutdown, and malfunction plan; develop and implement an operation, maintenance, and monitoring plan; and submit semiannual reports of any event where the plans were not followed. Semiannual reports for periods of operation during which the monitoring parameter ranges established during the initial compliance test are exceeded, or reports certifying that no exceedances have occurred are also required. Some plants are subject to limitations on the type of fuel that can be used to fire kilns. If those plants must use an alternative fuel, they must submit a notification of intent to use alternative fuel and a report on alternative fuel use.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refractory products manufacturing facility.

Estimated Number of Respondents: 8.

Frequency of Response: On occasion, initially, and semiannually.

Estimated Total Annual Hour Burden: 470.

Estimated Total Annual Costs: $30,304, which includes $3,000 annualized O&M costs, and $27,304 annualized labor costs.

Changes in the Estimates: There is a decrease of 256 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden from the most recently approved ICR is due to the requirements of the rule that states all existing sources must be in compliance within three years of promulgation date, thus, less burden is imposed on existing sources after achieving compliance. Also, there are no new sources expected over the three years of this ICR.

There was also a decrease in the capital/startup and operations and maintenance (O&M) costs from the previous ICR. There was an increase in the O&M costs to account for eight sources. The major decrease was due to the fact that there are no new sources that would incur capital/startup costs over the next three years of this ICR.

Dated: April 24, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6769 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0042, FRL–8166–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Surface Coating of Large Household and Commercial Appliances (Renewal); EPA ICR Number 1954.03, OMB Control Number 2060–0457

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0042, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2005–0042, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and

the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for the Surface Coating of Large Household and Commercial Appliances (Renewal).

ICR Numbers: EPA ICR Number 1954.03, OMB Control Number 2060–0457.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents are owners or operators of large appliance surface coating operations. Owners or operators of the affected facilities described must make initial reports when a source becomes subject to the standard, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to National Emission Standards for Hazardous Air Pollutants (NESHAP). Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 97 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of large appliance surface coating operations.

Estimated Number of Respondents: 90.

Frequency of Response: Initial, Semiannually, On Occasion.

Estimated Total Annual Hour Burden: 28,845.

Estimated Total Annual Cost: $2,326,984, which includes $64,000 annualized capital/startup costs, $108,000 annualized O&M costs, and $2,154,984 annualized labor costs.

Changes in the Estimates: There is an increase of 21,108 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden reflects the need for facilities to be in compliance with the rule requirements prior to the date of this ICR. The increase in O&M costs is due to installation and maintenance of equipment used to verify compliance with the rule requirements.

Dated: April 27, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–6770 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV–2002–4 and –6 FRL–8166–7]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit Amendments for Georgia Power Company—Bowen Steam-Electric Generating Plant, Cartersville (Bartow County), GA; Branch Steam-Electric Generating Plant, Milledgeville (Putnam County), GA; Hammond Steam-Electric Generating Plant, Coosa (Floyd County), GA; McDonough/Atkinson Steam-Electric Generating Plant, Smyrna (Cobb County), GA; Scherer Steam-Electric Generating Plant, Juliette (Monroe County), GA; Wansley Steam-Electric Generating Plant, Roopville (Heard County), GA; and Yates Steam-Electric Generating Plant, Newnan (Coweta County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order denying petitions to object to state operating permit amendments.

SUMMARY: Pursuant to Clean Air Act Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated March 15, 2006, denying two (2) petitions to object to state operating permit amendments issued by the Georgia Environmental Protection Division (EPD) to Georgia Power Company for the following facilities: Bowen Steam-Electric Generating Plant located in Cartersville, Bartow County, Georgia; Branch Steam-Electric Generating Plant located in Milledgeville, Putnam County, Georgia; Hammond Steam-Electric Generating Plant located in Coosa, Floyd County, Georgia; McDonough/Atkinson Steam-Electric Generating Plant located in Smyrna, Cobb County, Georgia; Scherer Steam-Electric Generating Plant located in Juliette, Monroe County, Georgia; Wansley Steam-Electric Generating Plant located in Roopville, Heard County, Georgia; and Yates Steam-Electric Generating Plant located in Newnan, Coweta County, Georgia. This

order constitutes final action on two (2) petitions submitted by the Georgia Center for Law in the Public Interest (GCLPI) on behalf of the Sierra Club, Georgia Forest Watch, and Colleen Kiernan and the Sierra Club and Georgia Public Interest Research Group, respectively. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the Order, the petitions, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/bowen-7plants_decision2002.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On July 9, 2002, EPA received a petition submitted by GCLPI on behalf of the Sierra Club, Georgia Forest Watch, and Colleen Kiernan (Petitioners), requesting that EPA object to a state title V operating permit amendment issued by EPD to Georgia Power for Plant Bowen. On November 20, 2002, EPA received another petition from GCLPI on behalf of the Sierra Club and Georgia Public Interest Research Group (Petitioners), requesting that EPA object to another state title V operating permit amendment issued by EPD to Georgia Power for Plant Bowen as well as six (6) other state title V operating permit amendments issued for Plants Branch, Hammond, McDonough/Atkinson, Scherer, Wansley, and Yates. The Petitioners maintain that the respective permit amendments are inconsistent with the Act because the emissions reductions required by the permit terms contained therein do not qualify as offsets. Since the petitions have been determined by EPA to be interrelated, they have been considered together.

On March 15, 2006, the Administrator issued an order denying the petitions. The order explains the reasons behind EPA's conclusion that the Petitioners failed to demonstrate that the respective permit amendments are not in compliance with the requirements of the Act.

Dated: April 25, 2006.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. E6–6772 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8167–1; Docket ID No. EPA–HQ–ORD–2006–0223]

Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects; External Review Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop.

SUMMARY: EPA is announcing that Eastern Research Group, Inc., an EPA contractor for external scientific peer review, plans to convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects; External Review Draft'' (EPA/600/R–06/013A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

The external peer-review workshop provides an opportunity for all interested parties to comment on the document. EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Eastern Research Group, Inc. invites the public to register to attend this workshop as observers. In addition, Eastern Research Group, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* On March 31, 2006, EPA announced a 45-day public comment period on the draft document (71 FR 16306). In preparing a final report, EPA will consider public comments it received during the public comment period and will consider the Eastern Research Group, Inc. report of the comments and recommendations from the external peer-review workshop.

DATES: The peer-review panel workshop will begin on May 25, 2006, at 9 a.m., adjourning at 5:30 p.m. and will continue on May 26, 2006 at 9 a.m., adjourning at 3 p.m.

ADDRESSES: The peer-review workshop will be held at the Andrew W. Briedenbach Environmental Research Building, 26 W. Martin Luther King Dr., Cincinnati, OH, 45268, in room AG–30. The EPA contractor, Eastern Research Group, Inc., is organizing, convening, and conducting the peer-review workshop. Observers may attend the meeting of the expert panel by filling out the form available on the Internet at *https://www2.ergweb.com/projects/conferences/ncea/* or by calling Eastern Research Group, Inc.'s conference line between the hours of 9 a.m. and 5:30 p.m. EST at 781–674–7374 or toll free at 800–803–2833, or by faxing a registration request to 781–674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for online pre-registration is May 18, 2006. Telephone and fax registrations will continue to be accepted after this date, including on-site registration, if space allows.

The draft ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects; External Review Draft'' (EPA/600/R–06/013A) is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and

the Data and Publications menus at *http://www.epa.gov/ncea.*

A limited number of paper copies are available from Ms. Donna Tucker, Technical Information Manager, NCEA-Cincinnati; telephone: 513–569–7257; facsimile: 513–569–7916; e-mail: *tucker.donna@epa.gov.* If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects,'' and its EPA publication number, EPA/600/R–06/013A.

Copies are not available from Eastern Research Group, Inc.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the external peer-review workshop should be directed to Eastern Research Group, Inc. at 10 Hartwell Avenue, Lexington, MA 02421–3136; by telephone: 781–674–7374 or toll free at 800–803–2833; or by facsimile: 781–674–2906; or by e-mail: *meetings@erg.com.*

For technical information, contact Linda K. Teuschler, NCEA-Cincinnati, by telephone: 513–569–7573; facsimile: 513–487–2539; or e-mail: *teuschler.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

In EPA's 2003 ''Framework for Cumulative Risk Assessment,'' cumulative risk assessment is defined as the evaluation of risks from exposures to multiple chemicals and other stressors, and having a population focus rather than a source-to-receptor focus. Several reports and environmental justice concerns published over the past 11 years have highlighted the importance of estimating cumulative risks. EPA has published several guidance documents dealing with specific aspects of cumulative risk, such as chemical mixture risk assessment, planning and scoping, stakeholder involvement, and the toxicity from a mixture of pesticides sharing a common mode of action. This draft document is one contribution to EPA's efforts to address issues related to cumulative health risk assessment.

Existing EPA guidance addresses some of the combination aspects of cumulative risk, but none addresses all of the multiples included in this report, such as consideration of the composite impact of multiple health effects. Among the distinctive new approaches are those for grouping chemicals based on exposure characteristics and toxic endpoints, multi-route combination of relative potency factors, integration of categorical regression modeling of multiple effects with additivity approaches, and the emphasis on the iteration and collaboration between exposure assessment and dose-response assessment to ensure compatible and relevant information. Major findings and conclusions in this document are as follows:

- This draft report provides a set of approaches that deal with certain complications in cumulative risk assessment, specifically those caused by multiple chemicals, exposures and effects, including toxicological interactions and environmental transformations of mixture component chemicals.
- The scope is focused on the evaluation of health risks from exposures to multiple chemicals, including multiple exposure routes and times as well as multiple health endpoints.
- Areas of cumulative health risk assessment emphasized in this report can often be performed with existing information.
- Exposure and toxicity characterizations of mixtures are strongly dependent on mixture composition (chemicals and concentrations) and timing of exposures and health effects.
- Qualitative and semiquantitative approaches provided can simplify the number of potential combinations of chemicals, exposures, and effects to make the cumulative health risk assessment more feasible.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public in the afternoon. Please let Eastern Research Group, Inc. know if you wish to make comments during the workshop. (See **ADDRESSES** section above for contact information.) Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: May 1, 2006.

P.W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–6755 Filed 5–3–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Tuesday, May 9, 2006, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities.

DISCUSSION AGENDA:

Memorandum re: Economic Conditions and Emerging Risks in Banking for the Second Semiannual Assessment Period of 2006.

Memorandum re: DIF Assessment Rates for the Second Semiannual Assessment Period of 2006.

Memorandum and resolution re: Notice of Proposed Rulemaking to Implement the One-time Assessment Credit.

Memorandum and resolution re: Notice of Proposed Rulemaking to Implement Dividend Requirements.

Memorandum and resolution re: Proposed Amendments to Part 327 to Improve the Operational Processes Governing the FDIC's Deposit Insurance Assessment System.

Memorandum and resolution re: Interagency Notice of Proposed Rulemaking Regarding Identity Theft Red Flags and Address Discrepancies under Sections 114 and 315 of the FACT Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 500–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed

to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7122.

Dated: May 2, 2006.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 06–4268 Filed 5–2–06; 3:29 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act: Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, May 9, 2006, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), Title 5, United States Code, to consider matters relating to the Corporation's resolution and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7122.

Dated: May 2, 2006.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 06–4269 Filed 5–2–06; 3:29 pm]

BILLING CODE 6714–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT), May 16, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the April 17, 2006, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

—Welcome to new General Counsel/Secretary.
—NFC-to-SI Transition Report (June 9).
—Legislation Update.
—Performance Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 1, 2006.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 06–4213 Filed 5–1–06; 4:26 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Minority Community Health Partnership HIV/AIDS Demonstration Grant Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health, HHS.

ACTION: Notice.

Announcement Type: Competitive Initial Announcement of Availability of Funds.

Catalog of Federal Domestic Assistance Number: Minority Community Health Partnership HIV/AIDS Demonstration Grant Program—93.137.

DATES: Application Availability Date: May 4, 2006. Application Deadline: June 19, 2006.

SUMMARY: This announcement is made by the United States Department of Health and Human Services (HHS or Department), Office of Minority Health (OMH) located within the Office of Public Health and Science (OPHS), and working in a ''One-Department'' approach collaboratively with participating HHS agencies and program (entities). The mission of the OMH is to improve the health of racial and ethnic minority populations through the development of policies and programs that address disparities and gaps. OMH serves as the focal point within the HHS for leadership, policy development and coordination, service demonstrations, information exchange, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities.

As part of a continuing HHS effort to improve the health and well being of racial and ethnic minorities, the Department announces availability of FY 2006 funding for the Minority Community Health Partnership HIV/AIDS Demonstration Grant Program. Minority communities are currently at the center of the HIV/AIDS epidemic in this country. Based on reported cases of HIV/AIDS,[1] the Centers for Disease Control and Prevention (CDC) estimates that more than 1.1 million Americans were living with HIV/AIDS at the end of 2004. From 2001 to 2004, African Americans accounted for 50% of newly diagnosed cases of HIV/AIDS, despite the fact that they comprise only 13% of the U.S. population. Similarly, Hispanics, who comprise 14% of the U.S. population, accounted for nearly 20% of newly diagnosed cases. While federal efforts to prevent the spread of HIV focus heavily on testing and early diagnosis, community groups can make a difference by reaching out through education and awareness activities.

SUPPLEMENTARY INFORMATION:

Table of Contents

Section I. Funding Opportunity Description
1. Purpose
2. OMH Expectations
3. Applicant Project Results
4. Project Requirements

Section II. Award Information

Section III. Eligibility Information
1. Eligible Applicants
2. Cost Sharing or Matching
3. Other

Section IV. Application and Submission Information
1. Address To Request Application Package
2. Content and Form of Application Submission
3. Submission Dates and Time
4. Intergovernmental Review
5. Funding Restrictions

Section V. Application Review Information
1. Criteria
2. Review and Selection Process
3. Anticipated Award Date

Section VI. Award Administration Information
1. Award Notices
2. Administrative and National Policy Requirements
3. Reporting Requirements

Section VII. Agency Contacts

Section VIII. Other Information
1. Healthy People 2010
2. Definitions

Section I. Funding Opportunity Description

Authority: The program is authorized under 42 U.S.C. 300u–6, section 1707 of the Public Health Service Act, as amended.

1. *Purpose:* The Minority Community Health Partnership HIV/AIDS Demonstration Grant Program (hereinafter referred to as the Community Partnership HIV/AIDS Program) seeks to improve the health status relative to HIV/AIDS, of targeted minority (see definition) populations through health promotion and education activities. This program is

[1] HIV/AIDS Surveillance Report; Cases of HIV Infection and AIDS in the United States, 2004; Volume 16.

intended to test community-based interventions on reducing HIV/AIDS disparities among racial and ethnic minority populations, and demonstrate the effectiveness of community-based partnerships involving non-traditional partners at the local level in:

• Developing an integrated community-based response to the HIV/AIDS crisis through community dialogue and interactions;

• Addressing the sociocultural, linguistic and other barriers to HIV/AIDS treatment to increase the number of individuals seeking and accepting services; and

• Developing and implementing HIV/AIDS prevention, interventions, and educational efforts for targeted minority populations.

2. *OMH Expectations:* It is intended that the Community Partnership HIV/AIDS Program will result in:

• Increased number and capacity of community-based, minority-serving organizations directly involved in addressing the HIV/AIDS epidemic.

• Increased awareness of health promoting behaviors.

Reduction of sociocultural, linguistic and other barriers to HIV/AIDS treatment for targeted minority populations.

• Increased linkages among organizations to facilitate an increase in the number of targeted individuals entering a continuum of health care for HIV/AIDS.

• Increased HIV/AIDS counseling and testing services.

3. *Applicant Project Results:* Applicants must identify anticipated project results that are consistent with the overall Program purpose and OMH expectations. Project results should fall within the following general categories:

• Mobilizing Coalitions and Networks.

• Changing Behavior and Utilization.

• Increasing Access to Health Care Services.

• Increasing Knowledge and Awareness of HIV/AIDS.

The outcomes of these projects will be used to develop other national efforts to eliminate the disproportionate impact of HIV/AIDS on minority populations.

4. *Project Requirements:* Each applicant under the Community Partnership HIV/AIDS Program must propose to:

• Implement the project through a partnership of community-based organizations that will coordinate HIV/AIDS outreach, screening and education efforts and provide referrals and follow-up for HIV/AIDS treatment.

• Conduct a replicable program using an integrated community-based response to the HIV/AIDS crisis through community dialogue and interaction designed to improve the health status of targeted minority populations.

• Ensure that the target population is provided with HIV/AIDS health promotion and education outreach activities that are linguistically, culturally, and age appropriate.

• Engage minority communities in activities that will impact attitudes and perceptions about HIV/AIDS in these communities to increase the number of individuals seeking and accepting services.

• Include the ''A–B–C'' approach to HIV prevention—Abstinence, Be faithful, and use Condoms as a prevention strategy to assist in combating the spread of HIV/AIDS.

Section II. Award Information

Estimated Funds Available for Competition: $2.5 million in FY 2006.

Anticipated Number of Awards: 13 to 17.

Range of Awards: $150,000 to $200,000 per year.

Anticipated Start Date: September 1, 2006.

Period of Performance: 3 Years (September 1, 2006 to August 31, 2009).

Budget Period Length: 12 months.

Type of Award: Grant.

Type of Application Accepted: New.

Section III. Eligibility Information

1. Eligible Applicants

To qualify for funding, an applicant must be a:

(1) Private nonprofit community-based, minority-serving organization (see Definition) which addresses health or human services; or

(2) Public (local or tribal government) community-based organization which addresses health or human services;

(3) Historically Black College or University (HBCU), Hispanic Serving Institution (HSI), or Tribal College or University (TCU); and

Represent a community partnership of at least three discrete organizations which include:

—A community-based, minority-serving organization (applicant) with at least five years of documented experience in conducting HIV/AIDS education and health promotion activities.

—An AIDS Service Organization (ASO) with at least three years of documented experience to ensure that information dissemination on HIV/AIDS and related issues is current and accurate from a medical point of view; and

—A minority-serving organization rooted in the community with no experience in HIV/AIDS activities.

Requisite experience must be documented in the application through a description of the type of activities/services provided, when they began, and how long they were offered.

The partnership must be documented through a single signed Memorandum of Agreement (MOA) among the community-based organization (applicant), the ASO and the inexperienced organization. The MOA must specify in detail the roles and resources that each entity will bring to the project, and the terms of the linkage. The MOA must cover the entire project period. The MOA must be signed by individuals with the authority to represent the organization.

Other entities that meet the definition of private non-profit community-based, minority-serving organization and the above criteria that are eligible to apply are:

• Faith-based organizations.

• Tribal organizations.

• Local affiliates of national, state-wide, or regional organizations.

National, state-wide, and regional organizations may not apply for these grants. As the focus of the program is at the local, grassroots level, OMH is looking for entities that have ties to the local community. National, state-wide, and regional organizations operate on a broader scale and are not as likely to effectively access the targeted minority population in the specific, local neighborhood and communities.

The organization submitting the application will:

• Serve as the lead agency for the project, responsible for its implementation and management; and

• Serve as the fiscal agent for the Federal grant awarded.

2. Cost Sharing or Matching

Matching funds are not required for the Community Partnership HIV/AIDS Program.

3. Other

Organizations applying for funds under the Community Partnership HIV/AIDS Program must submit documentation of nonprofit status with their applications. If documentation is not provided, the application will be considered non-responsive and will not be entered into the review process. The organization will be notified that the application did not meet the submission requirements.

Any of the following serves as acceptable proof of nonprofit status:

• A reference to the applicant organization's listing in the Internal Revenue Service (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.

• A copy of a currently valid IRS tax exemption certificate.

• A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.

For local, nonprofit affiliates of State or national organizations, a statement signed by the parent organization indicating that the applicant organization is a local nonprofit affiliate must be provided in addition to any one of the above acceptable proof of nonprofit status.

If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Applications that are not complete or that do not conform to or address the criteria of this announcement will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

An organization may submit no more than one application to the Community Partnership HIV/AIDS Program. Organizations submitting more than one proposal for this grant program will be deemed ineligible. The multiple proposals from the same organization will be returned without comment.

Organizations are not eligible to receive funding from more than one OMH grant program to carry out the same project and/or activities.

Section IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be obtained:

• At *http://www.omhrc.gov*.

• By writing to the OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the Office of Grants Management at (240) 453–8822. Please specify the Minority Community Health Partnership HIV/AIDS Demonstration Grant Program as the program for which you are requesting an application kit.

2. Content and Form of Application Submission

A. Application and Submission

Applicants must use Grant Application Form OPHS–1 and complete the Face Page/Cover Page (SF424), Checklist, and Budget Information Forms for Non-Construction Programs (SF424A). In addition, the application must contain a project narrative. The project narrative (including summary and appendices) is limited to 60 pages. Organizations funded under the Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS Program in FY 2002 (project periods beginning September 30, 2002 and ending as late as September 29, 2006) are also required to submit a Progress Report. This report is limited to 15 pages double-spaced, which do not count against the page limitation.

The narrative must be printed on one side of 8½ by 11 inch white paper, with one-inch margins, double-spaced and 12-point font. All pages *must* be numbered sequentially including any appendices. (Do not use decimals or letters, such as: 1.3 or 2A). Do not staple or bind the application package.

The narrative description of the project must contain the following, in the order presented:

• Table of Contents.

• Project Summary: Describe key aspects of the Background, Objectives, Program Plan, and Evaluation Plan. The summary is limited to three (3) pages.

• Background and Demonstrated Capability:

—*Statement of Need:* Describe the HIV/AIDS epidemic in the targeted community. Describe and document (with data) demographic information on the targeted geographic area, the significance or prevalence of the problem or issues affecting the target minority group(s). Describe the target population (e.g., race/ethnicity, age, gender, educational level/income). Provide rationale for the approach. Support with data from the local area (national, regional and state data may be used to put the local problem in context). Identify existing services and the extent to which they reach the targeted community. Identify partnership members and provide the rationale for including them in the project.

—*Experience:* Describe any similar projects implemented to work with issues of HIV/AIDS, and the results of these efforts. (For those organizations funded under the Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS in FY 2002, you must attach a progress report on that specific project and its results). Discuss the applicant organization's experience in managing projects/activities, especially those targeting the population to be served. Indicate where the project will be located within the organization's structure and the reporting channel. Provide a chart of the proposed project's organizational structure, showing who reports to whom. Describe how the partnership organizations will interface with the applicant organization.

• Objectives: State objectives in measurable terms, including baseline data, improvement targets and time frames for achievement for the three-year project period.

• Program Plan: Clearly describe how the project will bridge the identified gap(s) in existing services and how it will be carried out. Describe specific activities and strategies planned to achieve each objective. For each activity, describe how, when, where, by whom, and for whom the activity will be conducted. Describe the role of each partnership organization in the project.

Provide a description of the proposed program staff, including resumes and job descriptions for key staff, qualifications and responsibilities of each staff member, and percent of time each will commit to the project. Provide a description of duties for any proposed consultants. Describe any products to be developed by the project. Provide a time line for each of the three years of the project.

• Evaluation Plan: Clearly delineate how program activities will be evaluated. The evaluation plan must be able to produce documented results that demonstrate whether and how the strategies and activities funded under the Program made a difference in improving the HIV/AIDS health status of the targeted minority population(s). The plan must identify the expected results for each objective. The description must include data collection and analysis methods, demographic data to be collected on project participants, process measures which describe indicators to be used to monitor and measure progress toward achieving projected results, outcome measures to show the project has accomplished planned activities, and impact measures that demonstrate achievement of the objectives.

Discuss plans and describe the vehicle (*e.g.*, manual, CD), that will be used to document the steps which others may follow to replicate the proposed project in similar

communities. Describe plans for disseminating project results to other communities.

Appendices: Include MOAs, progress report (if required), and other relevant information in this section.

In addition to the project narrative, the application must contain a detailed budget justification which includes a narrative explanation and indicates the computation of expenditures for each year for which grant support is requested. The budget request must include funds for key project staff to attend an annual OMH grantee meeting. (The budget justification does not count toward the page limitation.)

B. Data Universal Numbering System number (DUNS)

Applicants must have a Dun & Bradstreet (D&B) Data Universal Numbering System number as the universal identifier when applying for Federal grants. The D&B number can be obtained by calling (866) 705–5711 or through the web site at *http://www.dnb.com/us/*.

3. Submission Dates and Times

Application Deadline Date: June 19, 2006.

Submission Mechanisms

The Office of Public Health and Science provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the Office of Grants Management, OPHS, confirming the receipt of applications submitted using any of these mechanisms. Applications submitted after the deadline described below will not be accepted for review. Applications that do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

You may submit your application in either electronic or paper format.

To submit an application electronically, use either the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov* or the Grants.gov Web site, *http://www.Grants.gov/*. OMH will not accept grant applications via any other means of electronic communication, including email or facsimile transmission.

Electronic Submission

If you choose to submit your application electronically, please note the following:

- Electronic submission is voluntary, but strongly encouraged. You will not receive additional point value because you submit a grant application in electronic format, nor will you be penalized if you submit an application in paper format.
- The electronic application for this program may be accessed on *https://egrants.osophs.dhhs.gov* (eGrants) or on *http://www.grants.gov/* (Grants.gov). If using Grants.gov, you must search for the downloadable application package by the CFDA number (93.910).
- When you enter the eGrants or the Grants.gov sites, you will find information about submitting an application electronically, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process. Visit eGrants or Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. Grants.gov requires organizations to successfully complete a registration process prior to submission of an application.
- The body of the application and required forms can be submitted electronically using either system. Electronic submissions must contain all forms required by the application kit, as well as the Program Narrative, Budget Narrative, and any appendices or exhibits. Applicants using eGrants are also required to submit, by mail, a hard copy of the face page (SF424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. (Applicants using Grants.gov are not required to submit a hard copy of the SF424, as Grants.gov uses digital signature technology.) If required, applicants using eGrants may also need to submit a hard copy of SF LLL, and/or certain program related forms (e.g., Program certifications) with original signatures.
- Any other hard copy materials, or documents requiring signature, must also be submitted via mail. Mail-in items may only include publications, resumes, or organizational documentation. (If applying via eGrants, the applicant must identify the mail-in items on the Application Checklist at the time of electronic submission.) The application will not be considered complete until both the electronic application components and any hard copy materials or original signatures are received. All mailed items must be received by the Office of Grants Management, OPHS by the deadline specified below.
- Your application must comply with any page limitation requirements described in this program announcement.
- We strongly encourage you to submit your electronic application well before the closing date and time so that if difficulties are encountered you can still send in a hard copy overnight. If you encounter difficulties, please contact the eGrants Help Desk at 1–301–231–9898 x142 (*egrants-help@osophs,dhhs.gov*), or the Grants.gov Help Desk at 1–800–518–4276 (*support@grants.gov*) to report the problem and obtain assistance with the system.
- Upon successful submission via eGrants, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. The confirmation will also provide a listing of all items that constitute the final application submission including all electronic application components, required hard copy original signatures, and mail-in items, as well as the mailing address of the Office of Grants Management, OPHS, where all required hard copy materials must be submitted and received by the deadline specified below. As items are received by that office, the application status will be updated to reflect their receipt. Applicants are advised to monitor the status of their applications in the OPHS eGrants system to ensure that all signatures and mail-in items are received.
- Upon successful submission via Grants.gov, you will receive a confirmation page indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that you print and retain this confirmation for their records, as well as a copy of the entire application package. Applications submitted via Grants.gov also undergo a validation process. Once the application is successfully validated by Grants.gov, you will again be notified and should immediately mail all required hard copy materials to the Office of Grants Management, OPHS, to be received by the deadline specified below. It is critical that you clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials. Validated applications will be electronically transferred to the OPHS eGrants system for processing. Any applications deemed ''Invalid'' by Grants.gov will not be transferred to the eGrants system. OPHS has no responsibility for any application that is not validated and transferred to OPHS from Grants.gov.
- Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on June 19,

2006. All required hard copy original signatures and mail-in items must be received by the Office of Grants Management, OPHS, no later than 5 p.m. Eastern Time on the next business day after the deadline.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the complete application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The original and each of the two copies must include all required forms, certifications, assurances, and appendices.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the Office of Grants Management, OPHS, on or before 5 p.m. Eastern Time on June 19, 2006. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

For applications submitted in hard copy, send an original, signed in blue ink, and two copies of the complete application to: Ms. Karen Campbell, Director, OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Required hard copy mail-in items should be sent to this same address.

4. Intergovernmental Review

The Community Partnership HIV/AIDS Program is subject to the requirements of Executive Order 12372 which allows States the options of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits available under the notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. The SPOC list is also available on the Internet at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.* Applicants (other than federally recognized Indian tribes) should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. The due date for State process recommendation is 60 days after the application deadlines established by the OPHS Grants Management Officer. The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

The Community Partnership HIV/AIDS Program is subject to Public Health Systems Reporting Requirements. Under these requirements, community-based non-governmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State or local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letter forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OPHS.

5. Funding Restrictions

Budget Request: If funding is requested in an amount greater than the ceiling of the award range, the application will be considered non-responsive and will not be entered into the review process. The application will be returned with notification that it did not meet the submission requirements.

Grant funds may be used to cover costs of:

- Personnel.
- Consultants.
- Equipment.
- Supplies (including screening and outreach supplies).
- Grant-related travel (domestic only), including attendance at an annual OMH grantee meeting.
- Other grant-related costs.

Grants funds may not be used for:

- Building alterations or renovations.
- Construction.
- Fund raising activities.
- Job training.
- Medical care, treatment or therapy.
- Political education and lobbying.
- Research studies involving human subjects.
- Vocational rehabilitation.

Guidance for completing the budget can be found in the Program Guidelines, which are included with the complete application kits.

Section V. Application Review Information

1. Criteria

The technical review of the Community Partnership HIV/AIDS Program applications will consider the following four generic factors listed, in descending order of weight.

A. Factor 1: Program Plan (35%)

- Appropriateness and merit of proposed approach and specific activities for each objective.
- The degree to which the project design, proposed activities and products to be developed are culturally appropriate.
- Logic and sequencing of the planned approaches as they relate to the statement of need and to the objectives.
- Soundness of the established partnership and the roles of the partnership members in the program.
- Applicant's capability to manage and evaluate the project as determined by:

—Qualifications and appropriateness of proposed staff or requirements for ''to be hired'' staff and consultants.
—Proposed staff level of effort.
—Management experience of the applicant.
—The applicant's organizational structure and proposed project organizational structure.
—Appropriateness of defined roles including staff reporting channels and that of any proposed consultants.
—Clear lines of authority among the proposed staff within and between the partnership organizations.

B. Factor 2: Evaluation (25%)

- The degree to which expected results are appropriate for objectives and activities.
- Appropriateness of the proposed data collection plan (including demographic data to be collected on project participants), analysis and reporting procedures.
- Suitability of process, outcome, and impact measures.
- Clarity of the intent and plans to assess and document progress towards achieving objectives, planned activities, and intended outcomes.

• Potential for the proposed project to impact the HIV/AIDS health status of the target population(s).
• Soundness of the plan to document the project for replication in similar communities.
• Soundness of the plan to disseminate project results.

C. Factor 3: Background and Demonstrated Capability (20%)

• Demonstrated knowledge of the problem at the local level.
• Significance and prevalence of HIV/AIDS in the proposed community and target population.
• Extent to which the applicant demonstrates access to the target community(ies), and whether it is well positioned and accepted within the community(ies) to be served.
• Extent and documented outcome of past efforts and activities with the target population.
• If applicable, extent and documented outcome(s) of activities conducted under the OMH-supported Minority Community Health Coalition Demonstration Grant Program, HIV/AIDS included in the required progress report.

D. Factor 4: Objectives (20%)

• Merit of the objectives.
• Relevance to the OMH Program purpose and expectations, and the stated problem to be addressed by the proposed project.
• Degree to which the objectives are stated in measurable terms.
• Attainability of the objectives in the stated time frames.

2. Review and Selection Process

Accepted Community Partnership HIV/AIDS Program applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Committee (ORC). Committee members are chosen for their expertise in minority health, health disparities, and their understanding of the unique health problems and related issues confronted by the racial and ethnic minority populations in the United States. Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health who will take under consideration:

• The recommendations and ratings of the ORC.
• Geographic distribution of applicants.
• Racial/ethnic distribution of targeted audience.

3. Anticipated Award Date

September 1, 2006.

Section VI: Award Administration Information

1. Award Notices

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Minority Health and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the Office of Minority Health. Unsuccessful applicants will receive notification from OPHS.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting Requirements

A successful applicant under this notice will submit: (1) Semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements apply.

Uniform Data Set: The Uniform Data Set (UDS) is a web-based system used by OMH grantees to electronically report progress data to OMH. It allows OMH to more clearly and systematically link grant activities to OMH-wide goals and objectives, and document programming impacts and results. All OMH grantees are required to report program information via the UDS (*http://www.dsgonline.com/omh/uds*). Training will be provided to all new grantees on the use of the UDS system during the annual grantee meeting.

Grantees will be informed of the progress report due dates and means of submission. Instructions and report format will be provided prior to the required due date. The Annual Financial Status Report is due no later than 90 days after the close of each budget period. The final progress report and Financial State Report are due 90 days after the end of the project period. Instructions and due dates will be provided prior to required submission.

Section VII. Agency Contacts

For questions on budget and business aspects of the application, contact Ms. Margaret Griffiths, Grants Management Specialist, OPHS Office of Grants Management, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Ms. Griffiths can be reached by telephone at (240) 453–8822; or by e-mail at *mgriffiths@osophs.dhhs.gov.*

For questions related to the Community Partnership HIV/AIDS Program or assistance in preparing a grant proposal, contact Ms. Mimi Chafin, Grants Coordinator, Division of Program Operations, Office of Minority Health, Tower Building, Suite 600, 1101 Wootton Parkway, Rockville, MD 20852. Ms. Chafin can be reached by telephone at (240) 453–8444; or by e-mail at *mchafin@osophs.dhhs.gov.*

For additional technical assistance, contact the OMH Regional Minority Health Consultant for your region listed in your grant application kit.

For health information, call the OMH Resource Center (OMHRC) at 1–800–444–6472.

Section VIII. Other Information

1. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-lead national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 Web site: *http://www.healthypeople.gov* and copies of the document may be downloaded. Copies of the Healthy People 2010: Volumes I and II can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $20.00 for CD–ROM). Another reference is the *Healthy People 2010 Final Report—2001.*

For one (1) free copy of the *Healthy People 2010*, contact: The National Center for Health Statistics, Division of Data Services, 3311 Toledo Road, Hyattsville, MD 20782, or by telephone at (301) 458–4636. Ask for HHS Publication No. (PHS) 99.1256. This document may also be downloaded from: *http://www.healthypeople.gov.*

2. Definitions

For purposes of this announcement, the following definitions apply:

AIDS Service Organization (ASO)—A health association, support agency, or other service activity involved in the prevention and treatment of AIDS (HIV/AIDS Treatment Information Services Glossary of HIV/AIDS-Related Terms, March 1997).

Community-Based Organizations—Private, nonprofit organizations and public organizations (local and tribal governments) that are representative of communities or significant segments of communities where the control and decision making powers are located at the community level.

Community-Based, Minority-Serving Organization—A community-based organization that has a history of service to racial/ethnic minority populations. (See Definition of Minority Populations below.)

Community Partnership—At least three discrete organizations/institutions in a community which collaborate on specific community concerns, and seek resolution of those concerns through a formalized relationship documented by written memoranda of agreement signed by individuals with the authority to represent the organizations.

Memorandum of Agreement (MOA)—A single document signed by authorized representatives of each community partnership member organization which details the roles and resources each entity will provide for the project and the terms of the agreement (must cover the entire project period).

Minority Populations—American Indian or Alaska Native; Asian; Black or African American; Hispanic or Latino; Native Hawaiian or other Pacific Islander (42 U.S.C. 300u–6, section 1707 of the Public Health Service Act, as amended).

Nonprofit Organizations—Corporations or associations, no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Proof of nonprofit status must be submitted by private nonprofit organizations with the application or, if previously filed with PHS, the applicant must state where and when the proof was submitted. (See III, 3 Other, for acceptable evidence of nonprofit status.)

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery.

Dated: April 19, 2006.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health.

[FR Doc. E6–6727 Filed 5–3–06; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the HIV Prevention Program for Young Women Attending Minority Institutions—Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities

AGENCY: Office on Women's Health, Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

Announcement Type: Competitive Cooperative Agreement—FY 2006 Initial announcement.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number is 93.015.

DATES: Application availability: May 4, 2006.

Applications due by 5 p.m. Eastern Time on May 4, 2006.

SUMMARY: This program is authorized by 42. U.S.C. 300u–2(a).

This initiative is intended to demonstrate the need for targeting prevention programs to college-age minority women to increase their knowledge and abilities in the areas of: Understanding how the female body works in relation to their increased vulnerability for acquiring HIV/AIDS; practicing the ABC [1]—*A*bstinence, *B*eing Faithful, *C*ondoms; gaining empowerment skills sufficient to negotiate safe sex practices; and shifting their attitudes and beliefs so that health becomes a priority in their lives. Moreover, the program intends to address HIV/AIDS/STDs from a cultural perspective by acknowledging the implications of being a young minority woman and educating them to take leadership in teaching their peers and partners how to live without contracting HIV/AIDS/STDs. Therefore, this pilot HIV/AIDS prevention education program will demonstrate what it takes to equip college-age minority women with the tools and the means to effectively communicate with their partners and protect themselves from HIV/AIDS/STDs. The OWH HIV/AIDS program began in 1999 with funding from the Minority AIDS Fund (formerly Minority AIDS Initiative) to address the gaps in services provided to women who are at risk or living with HIV. Since the inception of the HIV/AIDS programs, the program focus has expanded from two to seven. These programs include: (1) HIV Prevention for Women Living in the Rural South, (2) Prevention and Support for Incarcerated/Newly Released Women, (3) Model Mentorship for Strengthening Organizational Capacity, (4) HIV Prevention for Young Women Attending Minority Institutions (e.g. Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities), (5) HIV Prevention for Women Living in the U.S. Virgin Islands, (6) Prevention and Support for HIV Positive Women Living in Puerto Rico, and (7) Inter-generational Approaches to HIV Prevention for Women Across the Lifespan.

Funding will be directed at activities designed to improve the delivery of services to women disproportionately impacted by HIV/AIDS.

I. Funding Opportunity Description

The Office on Women's Health (OWH) within the Department of Health and Human Services (DHHS) is the focal point for women's health within the Department. The OWH, under the direction of the Deputy Assistant Secretary for Health (Women's Health), provides leadership to promote health equity for women and girls through gender specific approaches. The primary intent is to increase HIV prevention knowledge and reduce the risk of contracting HIV among young minority women. The OWH hopes to fulfill this purpose by providing funding to Minority Institutions to develop and implement a HIV/AIDS/STD prevention education program targeting young women on campus.

The proposed HIV prevention program must address HIV prevention from a women's health gender-based, women-centered, women-friendly, women-relevant, holistic, multi-disciplinary, cultural perspective. Information and services provided must be culturally and linguistically appropriate for young minority women. Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people to their lives. This definition of women's health encompasses mental

[1] USAID. The ''ABCs'' of HIV prevention: Report of a USAID technical meeting on behavior change approaches to primary prevention of HIV/AIDS. Washington, DC: Population, Health and Nutrition Information Project, 2003. *http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/abc.pdf.*

and physical health and spans the life course.

The goals for this program are:

• Identify effective methods to educate and increase awareness for prevention of HIV/AIDS/STDs infection among women attending minority institutions.

• Develop capacity for minority institutions to adequately address HIV/AIDS/STDs prevention education needs of the women on campus.

• Establish partnerships with campus student organizations and community organizations to increase access to reproductive health education, behavioral risk-reduction information, counseling, and HIV/STD testing.

• Develop gender centered education and prevention training modules on HIV/AIDS/STDs prevention education.

• Ensure health education training modules are culturally and linguistically appropriate for young minority women.

The objectives for this program are:

• Increase on campus activities targeting women at risk for HIV infection.

• Increase knowledge of accurate HIV/STD prevention information among women attending minority institutions.

• Improve HIV prevention education efforts involving women on campus.

• Improve access to HIV health related services for women attending minority institutions.

In order to achieve the goals and objectives of the program, the grantee shall: (1) Develop a HIV/AIDS program to provide prevention education for women attending the university. The program should offer a variety of services to the women including counseling and HIV/STD testing services, mental heath support, and education, etc. The program shall include the university student health services, inter-collegiate departments, and other community resources in the development of the program; (2) make sub-awards or funding opportunities available to student health services, inter-collegiate departments, student organizations, or other schools within the institution for the development and implementation of outreach activities. Note: The proposals for the sub-awards should include the following:

• Goal/s (specifying number of minority college-age women and their partners to be reached), objectives, curriculum (evidence-based), literature, and types of professional resource persons to be used when conducting required pilot program activities, *i.e.*, focus groups, meetings, conferences, lectures, health summits, media campaigns, counseling series, etc., during the academic year;

• Program Plan (specifying approach/methods; program format/s; staff required, detailed time line);

• Evaluation pre/post tests, participant satisfaction surveys, activity questionnaires, etc.

(3) Enter into a Memorandum of Understanding/Agreement (MOU/MOA) with program partners and resources. These entities may include student health services, inter collegiate departments, local health care entities, social services, community based organizations, etc. The MOUs should clearly outline the services to be provided by each of the collaborating organizations and whether any funds will be paid to the collaborating partner; (4) develop a plan to fund the services provided by the intercollegiate collaboration among the university officials, colleges, or schools within the institution; (5) ensure the sub-award recipients are developing and implementing an HIV/AIDS/STD prevention education program targeting women (and their partners) on campus. Request the sub-award recipients to submit reports on the activities; (6) hold an institution-wide wellness event (i.e. conference, seminar series, awareness week, etc.) that specifically addresses HIV/AIDS/STD prevention conference for all women campus-wide promoting the overall wellness among women; (7) evaluate the effectiveness of their program and conduct an internal or external evaluation of the program; outline indicators that reflect the impact on the target population, and provide a written analysis of the evaluation findings.

The grantee shall also, with input from community representatives and college/university officials, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for minority women on campus. In addition, the grantee shall demonstrate how program activities and performance reflect female responsive strategies. Finally, the grantee shall develop a plan, in partnership with the college/university and sub-award recipients, to continue the program activities beyond OWH funding.

II. Award Information

The OWH program will be supported through the cooperative agreement mechanism. Using this mechanism, the OWH anticipates making twelve new 2-year awards in FY 2006 for program activities at six Historically Black Colleges & Universities, four Hispanic Serving Institutions and two Tribal Colleges and Universities. The anticipated start date for new awards is September 1, 2006 and the anticipated period of performance is September 1, 2006, through August 31, 2008. Approximately $840,000 is available to make awards of up to $70,000 total cost (direct and indirect) for a 12-month period and OWH anticipates that $140,000 will be available for the 2-year project period. However, the actual number of awards made will depend upon the quality of the applications received and the amount of funds available for the program. Non-competing continuation awards of up to $70,000 (total cost) per year will be made subject to satisfactory performance and availability of funds.

The HIV Prevention for Women Attending Minority Institutions program is a collaborative effort between the OWH and the Office of Minority Health, Office of Public Health and Science. These offices will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities.

The applicant shall:

1. Implement the program described in the application.

2. Develop implementation plans.

3. Conduct an evaluation of their HIV Prevention program.

4. Oversee that college/university sub-award recipients develop and implement an HIV/AIDS/STD prevention education program targeting women students (and their partners) on campus; Award a minimum of $10,000 (e.g., sub-award) to university, or university department, college, or school, or institution liaison for program support, materials and student stipends.

5. Hold an institution wide HIV/AIDS/STD Prevention conference for all women campus wide promoting overall wellness among women.

6. Adhere to all program requirements specified in this announcement and the Notice of Grant Award.

7. Submit required progress, annual, and financial reports by the due dates stated in this announcement and the Notice of Grant Award.

8. Comply with the DHHS Protection of Human Subjects regulations (which require obtaining Institutional Review Board approval), set out at 45 CFR part 46, if applicable. General information about Human subjects regulations can be obtained through the Office for Human Research Protections (OHRP) at *http://www.hhs.gov/ohrp*, *ohrp@osophs.dhhs.gov*, Or toll free at (866) 477–4777.

The Federal Government will:

1. Conduct an Orientation meeting for the grantees within the first month of funding.

2. Conduct at least one site visit which includes some observation of program process.

3. Review time line and implementation plan.

4. Review all quarterly, annual, and final progress reports.

5. Provide technical assistance as needed.

The DHHS is committed to achieving the health promotion and disease prevention Objectives of Healthy People 2010 and the *HealthierUS* Initiative. Emphasis will be placed on aligning OWH activities and programs with the DHHS Secretarys four priority areas B heart disease, cancer, diabetes, and HIV/AIDSCand with the *Healthy People 2010:* Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, or living in rural localities. Applicants are encouraged to indicate the Healthy People 2010 objectives this activity will address. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 [DHHS Publication No. (PHS) 99–1256]. This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.* Also, *Steps to a HealthierUS* is a bold new initiative from the Department that advances the goal of helping Americans live longer, better, and healthier lives.

To help implement the *HealthierUS* initiative, the Department launched the *Steps to a HealthierUS* program. It lays out DHHS priorities and programs for *Steps to a HealthierUS*, focusing attention on the importance of prevention and promising approaches for promoting healthy environments. More information on these initiatives can be found at *http://www.healthierus.gov.*

III. Eligibility Information

1. Eligible Applicants

Eligible entities may include: Not for profit community based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, State and local government agencies, tribal government and tribal/urban Indian entities and organizations. Faith-based organizations are eligible to apply.

2. Cost Share or Matching

Cost sharing, matching funds, and cost participation is not a requirement of this grant.

IV. Application and Submission Information

1. *Address to Requst Application Package:* Application kits may be requested by calling (240) 453–8822 or writing to: Office of Grants Management, Office of Public Health and Science (OPHS), DHHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications must be prepared using Form OPHS–1. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (240) 453–8823.

2. *Content and Format of Application and Submission:* All completed applications must be submitted to the OPHS Office of Grants Management at the above mailing address. In preparing the application, it is important to follow ALL instructions provided in the application kit. Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OPHS. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 25 double-spaced pages, not including appendices and required forms, using an easily readable, 12 point font. All pages, figures and tables should be numbered.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps necessary to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the Web site *https://www.dnb.com/product/eupdate/requestOptions.html.*

At a minimum, each application for a cooperative agreement grant funded under this grant announcement must:

- Provide Memoranda of Agreement(s) (MOA's) specific to the collaborating partner. If the applicant is outside the minority institution, an MOA with the targeted HBCU, HSI, or TCU must be submitted naming the individual who will work with the program, describe their function, and state their qualifications. The MOA must be signed by individuals with the authority to represent and bind the organization (e.g. president, dean of students, heatlth services director, department chair, etc. The MOA must be on letterhead specific to the institution. Form letters will not be accepted.
- Present a plan to implement, set up services and/or community partnerships to provide counseling and testing services for the women attending the institution, and evaluate the effectiveness of the program, although only a program plan with recruitment strategies and incentives have to be in place at the time the application is submitted. The program intent, plan, and curriculum must be clearly identified in the proposal. Applicants are encouraged to be creative in ways to include many different student organizations in the effort to educate and prevent the spread of HIV.
- Be a sustainable organization with an established network of partners capable of providing coordinated health services in the targeted community. The network of partner organizations must have the capability to coordinate and provide comprehensive, seamless health services for women and empower them with the tools necessary to prevent contracting HIV outreach/education activities in women's health to improve the health status of women in the community. The partners and their roles and responsibilities to the program process must be clearly identified in the application.
- The applicant will need to describe background and experience specific to HIV/AIDS and women, particularly young women, minority women, poor women, and women living with HIV/AIDS by addressing how the program will be culturally (location, dominant languages, stigma, ethnic/racial), gender, and age appropriate, and indicate a clear, sustainable framework for providing those services; understanding women specific issues which may impact the targeted population (empowerment, self esteem, welfare, children, violence, etc.); demonstrate prevention interventions for the women that the project plan will employ; implications of performing HIV/AIDS related services on college campuses while focusing on young women at increased risk for infection.
- Describe how the proposed plan will accomplish objectives of the program and demonstrate the following: Review of existing health services, gaps, needs, resources to college women; How each task will be accomplished; outline the prevention program or services planned; time line, goals and objectives for program implementation; and; tools

used to measure effectiveness and overall success of program; propose a gender centered plan for maintaining a system of care to women attending the institution. By the end of Year 1 must be described in detail in the application.

• Demonstrate ability and experience developing and adapting ''prevention curricula'' appropriate to the cultural influences of HBCUs, HSIs, and TCUs; provide agency history of performing services and activities with young adults showing risk for HIV infection, particularly women; give project time periods and funding sources; show community acceptance through staff recognition, media, and requests for agency involvement.

• Demonstrate the ways in which the grantee's collaborating partners are gender and age appropriate, women-focused, women-friendly, women-relevant, and sensitive to the importance of HIV prevention and/or treatment for college age women.

• Detail/specify the roles and resources/services that each partner organization brings to the program, the duration and terms of agreement as confirmed by a signed agreement between the applicant organization and each partner, and describe how the partner organizations will operate. The partnership agreement(s) must name the individual who will work with the program, describe their function, and state their qualifications. The documents, specific to each organization (form letters are not acceptable), must be signed by individuals with the authority to represent and bind the organization (e.g., president, chief executive officer, executive director) and submitted as part of the grant application.

• Describe in detail plans for the evaluation of the program and when and how the evaluation will be used to enhance the program. The applicant must also indicate their willingness to participate in a national evaluation of the HIV prevention program to be conducted under the leadership of the OWH contractor.

Format and Limitations of Application: Applicants are required to submit an original ink-signed and dated application and 2 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8 ½″ x 11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of *25 double-spaced* pages, excluding the appendices. The original and each copy must be stapled; the application should be organized in accordance with the format presented in the RFA. An outline for the minimum information to be included in the ''Project Narrative'' section is presented below. The content requirements for the Project Narrative portion of the application are divided into five sections and described below within each Factor. Applicants must pay particular attention to structuring the narrative to respond clearly and fully to each review Factor and associated criteria. Applications not adhering to these guidelines may not be reviewed.

I. Background

A. Program goals and objective(s).

B. Organization charts that include partners and a discussion of the resources being contributed by the Institution, partners, personnel and their expertise and how their involvement will help achieve the Institution program goals.

C. Understanding of women specific issues that may impact the targeted population.

D. Understanding of access to care and quality of care issues specific to women.

II. Implementation Plan (Approach to the establishment of the HIV program)

A. Plan for how each task will be completed with a time line; Illustrate how time line of the program plan is congruent with the minority institutions academic year.

B. Partnerships and referral system.

C. Plans for sustaining the program on campus.

D. Gender centered plan for maintaining a system of care to women attending the institution.

E. Inclusion of MOA (If applicant is not a minority institution, an MOA with the targeted institution must be included. The document must be specific to the institution.).

III. Management Plan

A. Key project staff, their resumes, and staffing chart for budgeted staff.

B. To-be-hired staff and their qualifications.

C. Staff responsibilities.

D. Management experience of the lead agency and partners as related to their role in the program.

E. Succession planning and cross-training of responsibilities.

F. Address management of confidentiality and ethics in performance.

G. Address the management of student organization projects, reporting requirements, and incentives.

IV. Local Evaluation Plan

A. Purpose.

B. Describe tools and procedures for measuring strengths and weaknesses planned prevention activities.

C. Use of results to enhance programs.

D. Indicators that reflect goals/objectives are being met.

Appendices

A. Memorandums of Agreement/Understanding/Partnership Letters.

B. Required Forms (Assurance of Compliance Form, etc.).

C. Key Staff Resumes.

D. Charts/Tables (Partners, advisory board, services, population demographics, components, etc.).

E. Other attachments.

Use of Funds: A majority of the funds from the award must be used to support staff and efforts aimed at implementing the program. The Program Coordinator, or the person responsible for the day-to-day management of the program, must devote at least a 50 percent level of effort to the program. Funds may also be used to make small awards to student organizations or peer educators that will be conducting other outreach activities directly related to the program goals. Additionally, funds may be used for no more than two staff persons to attend a national HIV conference to receive training or technical assistance.

Funds may be used for personnel, consultants, supplies (including screening, education, and outreach supplies), and grant related travel. Funds may not be used for construction, building alterations, equipment, medical treatment, or renovations. All budget requests must be justified fully in terms of the proposed program goals and objectives and include an itemized computational explanation/breakout of how costs were determined.

Meetings: The OWH will convene grantees once a year for orientation. The meeting will be held in the Washington metropolitan area or one of the ten (10) DHHS regional offices. The program budget should include a request for funds to pay for the travel, lodging, and meals for the orientation meeting. The meeting is usually held within the first six weeks post award.

3. Submission Date and Time

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications

submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Website Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible. Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Website Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Website Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Website Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants

Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OWH.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* The due date for State process recommendations is 60 days after the application deadline. The OWH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. Funding Restrictions

Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations, or to purchase food.

6. Other Submission Requirements

None.

V. Application Review Information

Criteria: The objective technical review of applications will consider the following factors:

Factor 1: Implementation Plan—30%

This section must discuss:

1. Appropriateness of the existing community resources and linkages established to deliver a coordinated HIV prevention program. How each task will be accomplished; outline the prevention program or services planned; time line, goals and objectives for program implementation; propose a gender centered response plan for maintaining a system of care to women attending the college/university.

2. Appropriateness of proposed approach.

3. Soundness of evaluation objectives for measuring program effectiveness and changes in health behaviors.

4. Relationship to targeted minority institution.

5. Appropriateness of approach toward young adult women attending a minority institution college or university.

6. Appropriate MOAs or Letters of Intent should support assertions made in this section.

Factor 2: Management Plan—25%

This section must discuss:

1. Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff or requirements for to be hired staff;

2. Proposed staff level of effort; management experience of the lead agency; and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the program;

3. Staff experience as it relates to meeting the needs of the community and populations served; 4. Integration of students into the program;

5. Detailed position descriptions, resumes of key staff, and a staffing chart should be included in the appendix.

The management plan should also describe succession planning for key personnel and cross training of responsibilities. Thoughtful succession planning and cross training of responsibilities should contribute to the sustainability of the program and provide promotion potential.

Factor 3: Evaluation Plan—15%

A clear statement of program goal(s) and thoroughness, tools, and procedures used to measure the impact of planned prevention activities. List indicators that reflect the program's success in meeting the intent of the program. The feasibility and appropriateness of the program evaluation design, analysis of results, and procedures to determine if the program goals are met.

Factor 4: Objectives—15%

Merit of the objectives outlined by the applicant to address the HIV prevention program discussed in the program goals section in a way relevant to the targeted community needs and available resources. Objectives must be measurable and attainable within a stated time frame.

Factor 5: Background—15%

Adequacy of demonstrated knowledge of issues of HIV prevention for women,

particularly minority women, young women, poor women and women living with HIV; demonstrated need within the proposed local community and target population of minority women; demonstrated support and established linkages in place to operate a fully functional HIV prevention program targeting a college campus; and documented past efforts/activities outcome with underserved women. Clear description of the target population including total population, percent women, race/ethnicity data, and age distribution. Suggested tables to be used to report these data are included in the Application Kit.

Review and Selection Process: Funding decisions will be made by the OWH, and will take into consideration the recommendations and ratings of the review panel, program needs, geographic location, stated preferences, and the recommendations of DHHS Regional Women's Health Coordinators (RWHC).

Award Administration Information

1. Award Notices

Successful applicants will receive a notification letter from the Deputy Assistant Secretary for Health (Women's Health) and a Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer. The NGA shall be the only binding, authorizing document between the recipient and the OWH. Notification will be mailed to the Program Director identified in the application. Unsuccessful applicants will receive a notification letter with the results of the review of their application from the Deputy Assistant Secretary for Health (Women's Health).

2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to State and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.* The DHHS Appropriations Act requires that, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting

In addition to those listed above, a successful applicant will submit a progress report and a final report. This report shall provide a detailed summary of major achievements, problems encountered, and actions taken to overcome them. Progress reports require data collection into the matrix provided by the national evaluator. The final report shall summarize the goals achieved and lessons learned in the course of the contract, and how the program will be sustained. The report shall be in the format established by the OWH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR parts 74 and 92. The purpose of the quarterly and annual progress reports is to provide accurate and timely program information to program managers and to respond to Congressional, Departmental, and public requests for information about the program. An original and one copy of the quarterly progress report must be submitted by December 1, April 1, July 1, and September 1. If these dates fall on a Saturday or Sunday, the report will be due on Monday. The last quarterly report will serve as the annual progress report and must describe all project activities for the entire year. The annual progress report must be submitted by September 1 of each year and will serve as the non-competing continuation application. This report must include the budget request for the next grant year, with appropriate justification, and be submitted using Form OPHS–1.

VI. Agency Contact(s)

- For application kits and information on budget and business aspects of the application, please contact: Eric West, Associate Grants Management Officer, Office of Grants Management, Office of Public Health and Science, DHHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20857. Telephone: (240) 453–8822. Fax: (240) 453–8823.
- Questions regarding programmatic information and/or requests for technical assistance in the preparation of the grant application should be directed in writing to: Ms. Mary L. Bowers, Public Health Advisor, Office on Women's Health, Office of Public Health and Science, DHHS, 200 Independence Ave., SW., Rm 712E, Washington, DC 20201. Telephone: 202–260–0020. E-mail: *mbowers@osophs.dhhs.gov.*

VII. Other Information

Nine (9) HIV Prevention for Young Women attending Minority Institutions programs are currently funded by the OWH. Information about these programs may be found at the following Web site: *http://www.womenshealth.gov/owh/fund/index.htm.*

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

AIDS: Acquired immunodeficiency syndrome is a disease in which the body's immune system breaks down and is unable to fight off certain infections and other illnesses that take advantage of a weakened immune system.

Community-based: The locus of control and decision-making powers is located at the community level, representing the service area of the community or a significant segment of the community.

Community-based organization: Public and private, nonprofit organizations that are representative of communities or significant segments of communities.

Culturally competency/ appropriate: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended. Additional information on cultural competency is available at the following Web site: *http://www.aoa.dhhs.gov/May2001/factsheets/Cultural-Competency.html.*

Cultural perspective: Recognizes that culture, language, and country of origin have an important and significant impact on the health perceptions and health behaviors that produce a variety of health outcomes.

Gender-based Care: Highlights inequalities between men and women in access to resources to promote and protect health, in responses from the health sector, and in the ability to exercise the right to quality health care.

Health Services: College or University supported entity which provides students with an array of health related services which may include care, prevention, mental health and wellness.

Hispanic Serving Institutions (HSI): An institution can be classified as a Hispanic Serving Institution if the Hispanic enrollment at a college or university is at least 25 percent of the

total student enrollment. For a list of HSIs see *http://www.chci.org/chciyouth/resources/hispanicserving.htm.*

Historically Black Colleges and Universities (HBCU): Any historically black college or university that was established prior to 1964, whose principal mission was, and is, the education of black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary [of Education] to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation. For a list of HBCUs see *http://www.ed.gov/about/inits/list/whhbcu/edlite-list.html.*

HIV: The human immunodeficiency virus that causes AIDS.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes dental, mental, as well as physical health.

Lifespan: Recognizes that women have different health and psycho social needs as they encounter transitions across their lives and that the positive and negative effects of health and health behaviors are cumulative across a woman's life.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, dental health, etc.

Rural Community: All territory, population, and housing units located outside of urban areas and urban cluster.

Social Role: Recognizes that women routinely perform multiple, overlapping social roles that require continuous multi-tasking.

Student Organizations: University campus organization's that are run by students with student members, usually having a faculty advisor. Examples of student organizations include: sororities, fraternities, student government organizations, student associations, etc.

Sustainability: An organizations or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded from an OWH program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Tribal Colleges and Universities (TCU): Located on or near reservations, TCUs serve approximately 25,000 students, with the majority being American Indian students from more than 250 tribes. All TCUs offer two-year degrees, five offer four-year degrees and two offer graduate degrees. Tribal colleges are fully accredited by regional accrediting agencies, with the exception of three colleges that are candidates for accreditation. For a list of TCUs see *http://www.ed.gov/about/inits/list/whtc/edlite-tclist.html.*

Underserved Women: Women who encounter barriers to health care that result from any combination of the following characteristics: Poverty, ethnicity and culture, mental or physical state, housing status, geographic location, undocumented immigration status, language, age, and lack of health insurance/under-insured.

Women-centered/women-focused: Addressing the needs and concerns of women (women-relevant) in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working *with* women, not *for* women. Women clients are considered active partners in their own health and wellness.

Dated: April 14, 2006.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health).

[FR Doc. E6–6726 Filed 5–3–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Request for Generic Clearance To Conduct Voluntary Customer/Partner Surveys

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 27, 2006, in Volume 71, No. 18, page 4594 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Voluntary Customer Satisfaction Surveys.

Type of Information Collection Request: Extension. OMB Control No. 0925–0476, with an expiration date of May 31, 2006.

Need and Use of Information Collection: Executive Order 12962 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a ''Federal Reinvention Laboratory'' with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public, including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially.

Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations.

Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. Annual reporting burden is as follows:

Estimated Number of Respondents: 19,758.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours Per Response: .136; and

Estimated Total Annual Burden Hours Requested: 2680. The annualized cost to respondents is estimated at $42,451. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) in this notice, especially regarding the estimated public burden and associated response time, should be directed to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed collection of information, contact: Carol Vogel, National Library of Medicine, Building 38A, Room 2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number 301–402–9680. You may also e-mail your request to *vogelc@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 26, 2006.

Todd Danielson,

Executive Officer, National Library of Medicine, National Institutes of Health.

[FR Doc. E6–6708 Filed 5–3–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; CERTAS: A Researcher Configurable Self-Monitoring System

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment proposed data collection projects, the National Cancer Institute (NCI) and the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: CERTAS: A Researcher Configurable Self-Monitoring System.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: This study seeks to further our understanding of the usefulness and potential advantages of electronic self-monitoring of behavior-specifically diet and exercise behaviors associated with reduction of cancer risks. Logs, diaries, checklists and other self-monitoring tools are an ubiquitous part of nearly all cancer control research. The primary objective of this study trial is to compare paper-based self-monitoring to CERTAS self-monitoring devices (wireless sync and local sync) in a range of cancer risk behaviors. The findings will provide valuable information regarding: (1) A comparison of the real time recording compliance of these methods, (2) the pre-post effects of each type of recording (paper versus electronic), and (3) the relative cost per valid recorded entry for the two methods.

Frequency of Response: Daily.

Affected Public: Individuals.

Type of Respondents: Males and females 18 years of age or older who are: (1) Interested in improving their diet and exercise behaviors as they relate to cancer prevention, (2) proficient in utilizing a computer, and (3) generally healthy with no medical conditions which would require a special diet or preclude regular exercise. The present study includes pre-post tests and a four week comparative trial. The pre-post tests involve the completion of self-administered questionnaires on diet and physical activity as well as body measurements (i.e. height, weight, waist, hips). The pre-test visit will also include a review of the study information and informed consent. A usability interview of the self-monitoring method will conclude the post-test. The two office visits for the pre-post tests will take approximately one hour per visit. The four week comparative trial has a total of one-hundred and twelve possible responses (4 responses per 28 days; about 8 minutes per day).

The annual reporting burden is as follows:

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 3.

Average Burden Hours Per Response: 1.9, and

Estimated Total Annual Burden Hours Requested: 1,148. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

ESTIMATES OF HOUR BURDEN

Respondent type	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Male	80	3	1.9134	459.264
Female	120	3	1.9134	688.896
Total	200			1,148.16

HOUR BURDEN ESTIMATES BY FORM

Type of form	Number of items	Frequency of response	Average time per form	Aggregate hour burden
GSEL	28	2	.5	1.0
Physical Activity	3	2	.0835	.167
Self-Monitoring	15	1	3.7408	3.740

HOUR BURDEN ESTIMATES BY FORM—Continued

Type of form	Number of items	Frequency of response	Average time per form	Aggregate hour burden
*Additional Pre-test Items		1	.4175	.417
**Additional Post-test Items		1	.4175	.417
Total				5.74

*Includes study briefing, demographics, consent form, body measurements.
**Includes body measurements and usability interview.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electric, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Jami Obermayer, Principal Investigator, PICS, Inc., 12007 Sunrise Valley Drive, Suite 480 Reston, Virginia 20191 at (703) 758–1798 or e-mail your request, including your address to *jobermayer@lifesign.com*.

Commments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: April 27, 2006.

Rachelle Ragland-Greene,

National Institutes of Health, NCI Project Clearance Liaison.

[FR Doc. E6–6710 Filed 5–3–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of, automated collection techniques or other forms of information technology.

Proposed Project: Co-Occurring Infrastructure Measures—NEW

SAMHSA's Center for Mental Health Services and Center for Substance Abuse Treatment will implement provider-level performance measures about the screening, assessment, and treatment of co-occurring disorders. Implementation will be limited to the 15 current States with Co-occurring State Incentive Grants (COSIG), and States receiving COSIG grants in 2006 and future years. SAMHSA anticipates awarding two COSIG grants in 2006. COSIG grants enable States to develop or enhance their infrastructure and capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental disorders. Only the immediate Office of the Governor of States may receive COSIG grants, because SAMHSA considers the Office of the Governor to have the greatest potential to provide the multi-agency leadership needed to accomplish COSIG goals. COSIG grantees may use COSIG grants to improve service systems in one or more of five areas: Standardized Screening and Assessment, Licensure and Credentialing, Service Coordination and Network Building, Financial Planning, and Information Sharing. The COSIG program is part of SAMHSA plan to achieve certain goals regarding services for persons with co-occurring substance use and mental disorders:

- Increase percentage of treatment programs that screen for co-occurring disorders;
- Increase percentage of treatment programs that assess for co-occurring disorders;
- Increase percentage of treatment programs that treat co-occurring disorders through collaborative, consultative, and integrated models of care;
- Increase the number of persons with co-occurring disorders served.

The proposed measures will enable SAMHSA to benchmark and track progress toward these goals within COSIG states.

Information will be collected annually about providers' policies regarding screening, assessing and treatment services for persons with co-occurring disorders; the number and percentage of programs that offer screening, assessment, and treatment services for co-occurring disorders; and the number of clients actually screened, assessed, and treated through these programs.

A questionnaire, to be completed by providers, contains 47 items, answered either by checking a box or entering a number in a blank. The questionnaire is available both in printed form and electronically. Obtaining the information to enter on the questionnaire will require respondent

providers to track screening, assessment, and treatment services for clients.

COSIG States will be required to report aggregated information to SAMHSA for all providers directly participating in their COSIG projects. Samhsa will consider sampling strategies for states with large numbers of participating providers and for providers serving large numbers of clients.

Annual burden for the activities is shown below:

Questionnaire	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Provider sites	400	1	22.2	8880

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 28, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–6735 Filed 5–3–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–25]

Community Outreach Partnerships Center (COPC) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Applications for grants to colleges and universities establish Community Outreach Partnership Centers to conduct research and outreach activities that address the problems of urban areas. Reporting includes semi-annual and final reports.

DATES: *Comments Due Date:* June 5, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0180) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Community Outreach Partnerships Center (COPC) Program.

OMB *Approval Number:* 2528–0180.

Form Numbers: SF–424, SF–424–Supplement, HUD–424–CB, SF–LLL, HUD–27300, HUD–2880, HUD–2991, HUD–2990, HUD–2993, HUD–2994, HUD–30001, HUD–30002, HUD–30003, HUD–30011, HUD–96010, HUD–96011.

Description of the Need for the Information and Its Proposed Use: Applications for grants to colleges and universities establish Community Outreach Partnership Centers to conduct research and outreach activities that address the problems of urban areas. Reporting includes semi-annual and final reports.

Frequency of Submission: On occasion, Semi-annually, Other—Final Report.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	160	1.625		55.38		14,400

Total Estimated Burden Hours: 14,400.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 28, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–6712 Filed 5–3–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–24]

Notice of Submission of Proposed Information Collection to OMB; Builder's Certification of Plans, Specifications, and Site

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD requires the builder to complete the certification (Form HUD–92541) that notes an adverse site/locations factor(s) on the property, including floodplains. Lenders review the form and transmit the data or the paper form to HUD. This is done so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

DATES: Comments Due Date: June 5, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0496) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

Form Numbers: HUD–92541.

Description of the Need For the Information and Its Proposed Use: HUD requires the guilder to complete the certification (Form HUD–92541) that notes an adverse site/location factor(s) on the property, including floodplains. Lenders review the form and transmit the data or the paper form to HUD. This is done so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	1,600	41		0.24		15,744

Total Estimated Burden Hours: 15,744.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 27, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–6713 Filed 5–3–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5003 N–01]

Notice of Funding Availability for the Section 202 Demonstration Pre-Development Grant Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Housing.

B. *Funding Opportunity Title:* Section 202 Demonstration Pre-Development Grant Program.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* The OMB approval number for this NOFA is 2502–0267. The **Federal Register** number is FR–5003–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number(s):* 14.157, Section 202 Demonstration Pre-Development Grant Program.

F. *Dates:* The application submission date is Tuesday, June 6, 2006. All applications must be submitted and received by *http://www.grants.gov* no later than 11:59:59 p.m. eastern time on the application submission date. Refer to the General Section of the SuperNOFA (70 FR 13576), published March 21, 2005, and Section IV of this program NOFA for further information about application submission, delivery, and timely receipt requirements.

G. *Additional Overview Content Information:* Private nonprofit organizations and nonprofit consumer cooperatives interested in applying for funding under this program should carefully review the General Section of the FY 2005 SuperNOFA (70 FR 13576), published March 21, 2005; the Section 202 Program NOFA (70 FR 14187), published March 21, 2005; and the information detailed in this program NOFA.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

The purpose of the Section 202 Demonstration Pre-Development Grant Program is to provide predevelopment grant funding for architectural and engineering work, site control, and other planning-related expenses that are eligible for funding under the Section 202 Supportive Housing for the Elderly Program. Eligibility for predevelopment grant funding is limited to projects that have received Fund Reservation awards pursuant to the FY 2005 Section 202 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Subsequent to providing predevelopment grant funding to the selected eligible applicants, HUD will assess the impact of the availability of

such funding on the ability of project Sponsors to expedite the development processing of projects from Section 202 Fund Reservation to Initial Closing within 18 months.

HUD is aware of the complexities of developing Section 202 projects and understands that a lack of predevelopment funding may be a contributing factor in many instances where project Sponsors are not able to move their approved projects from the Fund Reservation award to Initial Closing within the required 18-month time frame. Funding under this program is not intended to duplicate Section 202 Capital Advance funding, but rather to provide a source of funding for predevelopment costs that would otherwise not be reimbursable until Initial Closing or would be payable from eligible funding resources secured outside of Section 202 Capital Advance funding.

B. Authority

The Section 202 Demonstration Pre-Development Grant Program is authorized by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved February 20, 2003), the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004), and the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, approved December 8, 2004).

II. Award Information

A. Funding Available

This NOFA makes available approximately $42,178,662 for predevelopment grants to private nonprofit organizations and consumer cooperatives in connection with the development of housing under the Section 202 Supportive Housing for the Elderly Program. The total dollar amount that is available under this Demonstration Pre-Development Grant Program includes approximately $4,440,662 that was provided by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved February 20, 2003), $19,882,000 provided by the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004), and $17,856,000 provided by the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, approved December 8, 2004).

B. Funding Process

HUD will make offers to fully fund as many applications as possible that are submitted by Fund Reservation project sponsors that received funding pursuant to the FY 2005 SuperNOFA. Applicants selected for funding under the FY 2005 Section 202 Supportive Housing for the Elderly NOFA are not guaranteed funding under this Demonstration Program.

C. Maximum Grant Award

The maximum grant amount per single application is $400,000. However, no more than $800,000 may be awarded to a single entity or its affiliated organizations. The amount of funding requested must be within the maximum grant award amounts.

D. Reduction of Requested Grant Amount

HUD may make an award in an amount less than requested, if:

1. HUD determines that any of the proposed predevelopment activities are ineligible for funding under the Section 202 Supportive Housing for the Elderly Program;
2. HUD determines that an eligible applicant has not been able to provide sufficient evidence to support the proposed cost of an eligible predevelopment item or activity;
3. HUD determines that a reduced grant would prevent duplicative federal funding; or
4. HUD determines that proposed costs for predevelopment activities are not based on comparable costs for eligible items and activities in the applicant's community. HUD field office staff will review proposed costs in accordance with customary and reasonable costs for such items within the geographical jurisdiction of the respective Multifamily Hub and/or Multifamily Program Center Office. If requested by HUD, eligible applicants must provide supportable evidence of comparable costs for proposed activities.

E. Term of Funded Activities

The grant term is 18 months from the date of the Section 202 Supportive Housing for the Elderly Agreement Letter. Funds not expended by the end of the grant term are subject to recapture and/or repayment if expended on ineligible activities. Failure to complete the development processing of the Section 202 project by the end of the grant term may result in grant termination, grant reduction, or other action deemed appropriate by HUD.

III. Eligibility Information

A. Eligible Applicants

All private nonprofit organizations and nonprofit consumer cooperatives that submitted an application for funding consideration under the FY 2005 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program are eligible to apply for funding under this Section 202 Demonstration Pre-Development Grant Program. (Please refer to the Section 202 Program NOFA (70 FR 14187), published March 21, 2005, for a discussion on the eligibility criteria for the Section 202 program). However, funding awards under this Section 202 Demonstration Pre-Development Grant Program will be restricted to those applicants that are selected for Fund Reservation Awards under the FY 2005 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Funding under this program will not be fair shared to each HUD office. Ineligible applicants include:

1. Applicants that failed to submit a request for Fund Reservation under the FY 2005 Section 202 Program NOFA.
2. Applications from eligible applicants that do not receive a Fund Reservation Award under the FY 2005 SuperNOFA for the Section 202 Program.
3. Applications from applicants that are ineligible under the Section 202 program, including public bodies and instrumentalities of public bodies.
4. Applicants submitting proposals involving mixed-financing for additional units.

B. Cost Sharing or Matching

No match required.

C. Other

1. Requirement and Procedures

To receive and administer funding under this Demonstration Program, applicants must fully satisfy the eligibility requirements for participation in the Section 202 Supportive Housing for the Elderly Program, as well as comply with the following:

a. *Statutory and Regulatory Requirements.* You must comply with all statutory, regulatory, threshold, and public policy requirements listed in Section III (C) of the General Section of the FY 2005 SuperNOFA (70 FR 13576), published on March 21, 2005.

b. *Allowable Use of Funds.* Grant funds may be used to cover the costs of architectural and engineering work, and other eligible planning activities relating to the development of supportive housing for the elderly under the Section 202 Program. Grantees may use the funding provided under this demonstration program to extend options to purchase or to lease sites, and enter into contracts with qualified third-party individuals, companies, or firms to provide professional services for eligible predevelopment activities

related to the development of an elderly housing project that was selected for funding under the FY 2005 Section 202 NOFA. Grantees may not use funds for land acquisition, leasing, new construction, or property rehabilitation, alteration, demolition, or disposition. HUD approval must be granted before a grantee can enter into a contract for professional services with any entity requiring HUD–2530 clearance. Such entities include, but are not limited to, housing consultants (including those instances where eligible Sponsors proposed to provide such services), general contractors, and management agents.

c. *Organizational Costs.* Eligible organizational expenses and/or costs are limited to those incurred in connection with the organization of an owner entity pursuant to the requirements of the Section 202 Supportive Housing for the Elderly Program.

d. *Site Control.* Applicants are required to provide evidence of site control, consistent with the requirements of the Section 202 Program, as a condition to being funded under the FY 2005 Section 202 NOFA. Applicants that receive funding awards under this NOFA may utilize this funding to extend site control in accordance with the site control requirements under the Section 202 Supportive Housing for the Elderly Program. For further discussion, see the FY 2005 Section 202 Program NOFA (70 FR 14187), published March 21, 2005.

e. *Phase I and Phase II Environmental Site Assessments (ESA).* The requirements for Phase I and II ESAs are the same as those that apply to the Section 202 Supportive Housing for the Elderly Program and are contained in the FY 2005 Section 202 Program NOFA.

f. *False Statements.* See the General Section of the FY 2005 SuperNOFA.

2. Program-Related Threshold Requirements

In addition to the threshold requirements in the General Section of the FY 2005 SuperNOFA, applicants must adhere to all program-specific threshold requirements as detailed in this NOFA. HUD will consider an application non-responsive to this NOFA and will not accept it for processing if the applicant:

a. Is determined to be ineligible (Please refer to Section III(A)(1) of this NOFA for a more detailed discussion on ineligible applicants);

b. Requested more than the maximum grant amount;

c. Is granted a waiver to submit a paper application, but fails to submit the required original and two copies; or

d. Failed to submit the threshold requirements as identified by the asterisk (*) in Section IV(B) of this program NOFA by the deadline date.

IV. Application and Submission Information

A. Addresses To Request Application Package

All information needed for the preparation and submission of this application is included in this program NOFA and the General Section of the FY 2005 SuperNOFA (70 FR 13576), published March 21, 2005. Copies of the General Section, this program NOFA, and the appendix may be downloaded from the Grants.gov Web site at *http://www.Grants.gov.* If you have difficulty accessing the information, you may call the Grants.gov Help Desk toll-free at (800) 518–GRANTS, or e-mail your questions to *support@grants.gov.* The Help Desk staff will assist you in accessing the information.

Your application must be transmitted electronically using *www.Grants.gov,* unless you request and receive a waiver of the requirement for electronic application submittal. See the General Section for further information and instructions pertaining to electronic application submission and waiver request requirements.

For applicants receiving a waiver to submit a paper application, an original and two copies of the completed application package must be received by the appropriate local HUD office on or before Tuesday, June 6, 2006. See Appendix A for a complete listing of the Multifamily Hub Offices and Multifamily Program Centers.

B. Content and Form of Application Submission

You should ensure that your application is complete before transmitting it to the following Web site: *http://www.grants.gov* and, in cases where a waiver of electronic submission requirement is granted, an original and two copies must be submitted to the appropriate HUD office. Upon receipt of the application by HUD staff, HUD will screen it to determine if there are any curable deficiencies. See Section (V)(B)(2) of this program NOFA for further discussion.

Applicants may submit more than one application to a single field office. However, no more than one application may be submitted per project. All applicable documents must have an original signature. Each application must propose a separate project and the proposed development must be located within the jurisdiction of the appropriate field office. To be eligible for review, an application must contain the required exhibits that include form SF–424, HUD–2880, and the narrative discussions. Forms needed for the application may be obtained from *http://www.hudclips.org* or *http://www.grants.gov.* Threshold items are identified by an asterisk (*). Failure to include threshold items in your initial application submission will render your application non-responsive and ineligible for funding by HUD. Applications must contain the required exhibits as listed below:

1. *Cover Letter.* A brief narrative detailing the project's name, HUD project number, and the name(s), address(es), contact person name(s), and telephone number(s) of the sponsor(s). The letter must also detail the total grant amount being requested under this program NOFA.

2. *Standard Form 424—Application for Federal Assistance.*

3. ** Narrative Demonstrating Need for Predevelopment Funding:* This exhibit requires applicants to submit form HUD–2880, Applicant/Recipient Disclosure/Update Report. This form details assistance from other governmental sources previously received in connection with the project. Applicants must also submit a brief narrative describing the financial circumstances that led the applicant to apply for funding assistance with predevelopment activities and how the lack of such assistance has impacted the applicant organization's previous or current development efforts.

4. ** Proposed Predevelopment Activities and Budget:* This exhibit requires applicants to submit a spreadsheet that specifically identifies the proposed activity(ies) and their anticipated cost. The recommended format is as follows:

Column 1—Clearly identify each eligible predevelopment activity being proposed by the applicant.

Column 2—Identify the anticipated cost for each activity.

The spreadsheet must identify the total predevelopment funding assistance being proposed in the application. No predevelopment grant funds may be expended by participants that do not have HUD–2530 clearance.

5. ** Project Development Schedule:* This exhibit should include a detailed development schedule that identifies the predevelopment activities being proposed, their projected start and completion dates, the projected completion date for all predevelopment

planning activities, and a brief narrative describing the applicant's plan for monitoring this schedule of activities and addressing delays should they occur. All projected development schedules must clearly demonstrate the applicant's ability to move its approved FY 2005 Section 202 elderly housing project from the Fund Reservation to the Initial Closing stage within 18 months of grant approval. In addition, all such schedules must provide a statement addressing how access to predevelopment funding will assist the applicant in moving its FY 2005 Section 202 elderly housing project to Initial Closing within 18 months of Fund Reservation approval. The completion of the Logic Model (form HUD–96010) will assist you in responding to this exhibit.

6. *Logic Model (HUD–96010).* The logic model is representative of this Section 202 Demonstration Pre-Development Grant Program proposal and serves as the ''executive summary'' for this grant request. Applicants must ensure that its logic model accurately represents the purpose of the funding request and the expected impact on the development process.

7. *Facsimile Transmittal Cover Page (HUD–96011).* This form must be used as part of the electronic application to transmit third-party documents and other information as described in the General Section of the SuperNOFA (if applicable).

8. *Acknowledgment of Application Receipt (HUD–2993).* This is not required for applications submitted electronically.

9. *Client Comments and Suggestions (HUD–2994).* This is optional.

If changes have been made to any of the forms that were submitted under the FY 2005 Section 202 NOFA, the Department requires that the updated form(s) be resubmitted under this Section 202 Demonstration Pre-Development Grant NOFA.

C. Submission Dates and Times

Your application must be submitted and received electronically by *Grants.gov* no later than 11:59:59 p.m. eastern time on the application submission date, unless a waiver of the electronic delivery process has been approved by HUD. Please refer to the General Section of the FY 2005 SuperNOFA for instructions on applying for a waiver. If a waiver is granted, you must submit an original and two copies of your application by Tuesday, June 6, 2006. You must comply with the mailing and timely receipt instructions in the General Section of the FY 2005 SuperNOFA and Appendix A of this program NOFA. These instructions have changed from the 2004 SuperNOFA.

D. Funding Restrictions

1. *Eligible Activities.* Section 202 Demonstration Pre-Development Grant Program funds must be used exclusively to facilitate planning, design, and predevelopment activities for projects funded under the FY 2005 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Such activities include architectural and engineering work, site control planning, and other planning activities related to the development of a multifamily housing project funded under the FY 2005 Section 202 Supportive Housing for the Elderly Program. Grantees may not use funds for land acquisition, leasing, new construction, or property rehabilitation, alteration, demolition, or disposition.

a. All expenses related to eligible activities must be limited to those actual costs that are incurred prior to initial closing and be otherwise eligible activities under the Section 202 Program. Activities that are eligible for funding include the following:

(1) *Appraisals.* The applicant's cost for obtaining the services of a qualified and licensed appraiser to establish the fair market value of the proposed site.

(2) *Architect Services.* The design fees charged by licensed architectural/engineering firms for construction of the applicant's project.

(3) *Engineering Services.* The actual cost of boundary survey, topographic survey, soil borings and tests.

(4) *Environmental Site Assessment.* The actual cost incurred for the environmental site assessment, i.e., Phase I and Phase II.

(5) *Consultant Services.* Up to 20 percent of the total amount of the contract between the applicant and its consultant for services related to the development and submission of an approvable Section 202 Fund Reservation Application.

(6) *Cost Analysis.* The cost of the contract between the applicant and a professional with experience in cost estimation, for an independent cost estimate needed to determine the viability of a proposed project as required for firm commitment processing under the Section 202 Program.

(7) *Legal Fees.* The cost for legal services and title binder fees.

(8) *Site Control.* The applicant's cost for extending the time for site control of the original site, including option costs necessary to extend the option agreement for up to 18 months, to the closing target date. The proceeds of this grant may not be used for site acquisition.

(9) *Market Studies.* The applicant's cost for a study completed by a qualified, independent, third-party, market research firm for purposes of examining the need for and verifying the marketability of the proposed project.

(10) *Organizational Expenses.* The actual cost related to the creation of an owner entity for the proposed project pursuant to Section 202 Program regulations.

(11) *Impact Fees.* One-time fees local governments charge Sponsor/Owners to offset the impact such housing will have on the community. (Typical impact fees: Traffic, solid waste, sewer, water, electric, gas, police protection, and fire protection).

(12) *Relocation expenses.* If the project involves displacement of site occupants that are eligible for relocation assistance, indicate the total estimated cost.

(13) *Building permits and variance fees.* The cost of obtaining building permits and variances.

2. *Ineligible Activities.* No proposed activity that is deemed to be ineligible will be funded from Section 202 Demonstration Pre-Development Grant funds.

a. Section 202 Demonstration Pre-Development Grant Program funds may not be used to acquire sites or other real property, to fund organizational overhead and/or operating expenses, to pay staff salaries, or fund any planning activity that is otherwise ineligible for assistance under the Section 202 Supportive Housing for the Elderly Program.

b. Funding under this NOFA may not be used to meet Minimum Capital Investment (MCI) requirements for the Section 202 Program.

c. Performance/Payment Bonds (dual obligee).

d. Taxes and interest.

e. Bond premium, builder's risk, liability insurance, fidelity bond insurance, performance bond insurance, cash bond, and insurance premiums.

In the event that funding awarded under this program is used for activities or purposes that have not been approved by HUD, HUD will seek repayment or any other available remedies.

3. Applicants submitting proposals involving mixed-financing for additional units are not eligible to be considered for predevelopment funding under this NOFA.

V. Application Review Information

A. Criteria

HUD Headquarters will select applications for the Section 202 Demonstration Pre-Development Grant funding through a rating process. HUD will award funding under this process until all available funding has been exhausted.

B. Review and Selection Process

1. HUD's application review process will include, but is not limited to, an eligibility review of each predevelopment planning activity being proposed by the applicant, the reasonableness of the proposed cost for each activity, the reasonableness of the applicant's proposed budget, and the ability of project Sponsors to expedite the development processing of projects from the Section 202 Fund Reservation to the Initial Closing stage within the 18-month time frame. All activities must be related to the development of the Section 202 housing project selected under the FY 2005 Section 202 Supportive Housing for the Elderly Program and be otherwise eligible activities under the Section 202 Program.

2. *Review for Curable Deficiencies.* A curable deficiency is a missing exhibit or portion of an exhibit that will not affect the eligibility of the applicant. The exhibits identified by an asterisk (*) as threshold requirements must be dated on or before the application submission date. Refer to the General Section of the SuperNOFA for additional information regarding procedures for corrections to deficient applications. HUD will screen all applications received by the application submission deadline for curable deficiencies. HUD will notify you in writing if your application is missing any of the exhibits or portions of exhibits, as listed in Section IV(B) of this NOFA, and you will be given 14 calendar days from the date of the HUD written notification to submit the information required to cure the noted deficiencies.

3. *Review for Threshold Requirements.* All applications must meet the threshold requirements identified in the General Section of the FY 2005 SuperNOFA, and in Section IV(B) and Section III(C)(2) of this program NOFA. Failure to meet any threshold item will render an application ineligible for funding consideration. Please note that Section III(C)(2) of the General Section of the FY 2005 SuperNOFA, and the items identified by an asterisk (*) as listed in Section IV(B) and in Section III(C)(2) of this NOFA, are also threshold requirements and must be dated on or before the application deadline date. Failure to satisfy all threshold requirements at the time of submission will render the application in question as nonresponsive to this NOFA, and the application will be subject to no further consideration. See the General Section of the FY 2005 SuperNOFA for additional procedures for corrections to deficient applications.

4. *Technical Review.* HUD Multifamily field office staff will review applications that passed the threshold review for compliance with the eligibility criteria set forth in this NOFA. However, HUD will not reject your application based on technical review without notifying you of that rejection and the reason(s) for the rejection, and providing you with an opportunity to appeal. You will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD field office. HUD will make a determination on an appeal before making its selection of projects to be forwarded to HUD Headquarters. HUD field office staff will forward to Headquarters a listing of eligible applications that were received by the deadline date, met all eligibility criteria, contained reasonable costs for eligible activities, and included all technical corrections by the designated deadline date.

5. HUD Headquarters will select Section 202 Demonstration Pre-Development Grant applications based on HUD Multifamily Program Centers' rating of the respective FY 2005 Section 202 application, beginning with the highest-rated application nationwide. After this selection, HUD Headquarters will select the next highest-rated application in another Program Center. Only one application will be selected per Multifamily Program Center. However, if there are no approvable applications in other Multifamily Program Centers, the process will begin again with the selection of the next highest-rated application nationwide. More than one application may be selected per HUD Multifamily Program Centers if there are no other approvable applications.

This process will continue into a second and subsequent round(s) until all approvable applications are selected using the available remaining funds. HUD Headquarters will fully fund as many applications as allocated funds will allow. HUD Headquarters will review its selection results to ensure that no single entity (including affiliated entities) receives grant funding in excess of $800,000. Once an organization receives its maximum amount of grant funding, no other projects from that organization will be eligible for selection from the succeeding rounds.

If there is a tie score between two or more applications, HUD will select the applicant with the highest score in Rating Factor 1 of the FY 2005 Section 202 application. If Rating Factor 1 is scored identically, the score in Rating Factor 2, 3, and 4, of the FY 2005 Section 202 application, will be compared in that order, until one of the applications received a higher score. If both applications still score the same, then the application that requests the least funding will be selected.

6. *Adjustments to Funding/Reduction of Requested Grant Amount.* See Section II(D) of this program NOFA.

VI. Award Administration Information

A. Award Notices

Following the congressional notification process, HUD will issue a press release announcing the selection of awards. Once such an announcement has been made, successful applicants will receive their selection letters and grant agreement via regular or overnight mail. The grant agreement is the legally binding document that establishes a relationship between HUD and the award recipient organization. Once properly executed, it authorizes the obligation and disbursement of funds.

1. As a condition of receiving a grant under this Section 202 Demonstration Pre-Development Program, grantees must open a separate, non-interest bearing account for the receipt and handling of these funds.

2. All applicants that were not selected for funding will receive a non-selection letter.

3. You may request a debriefing on your application in accordance with the General Section of the FY 2005 SuperNOFA. The request must be made to the Director of Multifamily Housing in the HUD field office to which you sent your application.

B. Administrative and National Policy Requirements

The Consolidated Appropriations Act, 2005, requires HUD to obligate all Section 202 funds appropriated for FY 2005 by September 30, 2008. Under 31 U.S.C. 1551, no funds can be disbursed from this account after September 30, 2013. The FY 2003 and FY 2004 Consolidated Appropriations require HUD to obligate all Section 202 Demonstration Pre-Development Grant funding appropriated for the respective fiscal years by September 30, 2006. Under 31 U.S.C. 1551, no funds can be disbursed from the account after

September 30, 2011. Under this demonstration program, obligation of funds occurs upon execution of the Grant Agreement.

C. Reporting

Grantees must submit quarterly program performance and financial status reports to their respective Multifamily Hub or Program Center office. Such reports must include a narrative on the progress of each eligible activity undertaken, a statement detailing the funds expended per activity, a narrative on problems encountered to date and how such problems may impact the grantee's proposed predevelopment or development time frame, a narrative on the grantee's plan of corrective action to ensure that its project will be under construction within 18 months of grant approval or less, a listing of the professional firms contracted with, dollar amounts contracted for and services provided to date, a budget summary identifying funding expended to date for eligible activities versus the total grant awarded, and a certification on whether or not the proposed project continues to be viable as of the date of the report.

The project owner is still required to report on its performance based on the Logic Model (form HUD–96010) submitted under the FY 2005 Section 202 NOFA. To supplement the quarterly program performance report, the project owner must submit an updated Logic Model (form HUD–96010). The logic model must indicate the results achieved against the proposed output goal(s) and proposed outcome(s) that were stated in the FY 2005 Section 202 Demonstration Pre-Development Grant Program application and agreed upon by HUD.

D. Environmental Requirements

The provision of assistance under this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and not subject to compliance action for related environmental authorities under 24 CFR 50.19 (b) (1), (3), (5), (8), and (16).

E. Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19 (c) (1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

VII. Agency Contacts

A. For programmatic information, you may contact the appropriate local HUD office, or Alicia Anderson at HUD Headquarters at (202) 708–3000, or you may access the Internet at *http://www.hud.gov/grants*. Persons with hearing and speech impairments may access the above number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

B. For technical assistance in downloading and submitting an application package through *www.Grants.gov*, contact the *Grants.gov* Help Desk at (800) 518-GRANTS, or by sending an e-mail to *support@grants.gov*.

VIII. Other Information

A. Section 102 of the HUD Reform Act, Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

1. *Documentation*. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Debriefing*. For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide a debriefing related to an applicant's application. All debriefing requests must be made in writing or by e-mail by the authorized official whose signature appears on the SF–424, or his or her successor in office, and submitted to the person or organization identified as the contact under the section entitled ''Agency Contact.'' Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

3. *Disclosures*. HUD will make available to the public for 5 years all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also reported on form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

4. *Publication of Recipients of HUD Funding*. HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide: a. Assistance subject to Section 102(a) of the HUD Reform Act; and b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

B. Section 103 of the HUD Reform Act

HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations in providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should

contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

C. Paperwork Reduction Act Statement

The information collection requirements contained in this document are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0267. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 4 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports, and the final report. The information will be used for grantee selection and monitoring of the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: April 27, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Local HUD Offices

Notes

1. Your application must be transmitted electronically using *www.Grants.gov*, unless you request and receive a waiver of the requirement for electronic application submittal. See the General Section of the SuperNOFA (70 FR 13576), published March 21, 2005, for further information and instructions pertaining to electronic application submission and waiver request requirements. The following information applies only to those applicants that have received a waiver to the electronic application submission requirement.

2. If you received a waiver of the electronic application submission requirement, you must send an original and two copies of your application to the appropriate local HUD office having jurisdiction over the locality in which your project will be located. Applicants with proposed projects to be located in the jurisdictions as identified below, in a. through f., must submit their application to the identified HUD office. If you send your application to the wrong local HUD office, it will be rejected. Therefore, if you are uncertain which local HUD office to submit your application to, you are encouraged to contact the local HUD office that is closest to your proposed project location(s) to ascertain the office's jurisdiction and thereby ensure that you submit your application to the correct local HUD office.

a. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

b. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

c. Applications for projects proposed to be located in Maryland that are within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

d. Applications for projects proposed to be located in Northern Virginia that are within the jurisdiction of the Washington, DC Office must be submitted to the Richmond, Virginia Office.

e. Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office.

f. Applications for projects proposed to be located within the jurisdiction of the Anchorage, Alaska Office must be submitted to the Seattle, Washington Office.

HUD—BOSTON HUB; HARTFORD OFFICE: One Corporate Center, 19th Floor, Hartford, CT 06103–3220, (860) 240–4800, TTY Number: (860) 240–4665.

BOSTON OFFICE: Thomas P. O'Neill, Jr. Federal Building, Room 301, 10 Causeway Street, Boston, MA 02222–1092, (617) 994–8200, TTY Number: (617) 565–5453.

MANCHESTER OFFICE: 1000 Elm Street, 8th Floor, Manchester, NH 03101, (603) 666–7510, TTY Number: (603) 666–7518.

PROVIDENCE OFFICE: 121 South Main Street, Suite 300, Providence, RI 02903–7104, (401) 277–8300, TTY Number: (401) 528–5403.

HUD—NEW YORK HUB; NEW YORK OFFICE: 26 Federal Plaza, Room 3200, New York, NY 10278–0068, (212) 264–8000, TTY Number: (212) 264–0927.

HUD—BALTIMORE HUB; BALTIMORE OFFICE: City Crescent Building, Fifth Floor, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106.

RICHMOND OFFICE: 600 East Broad Street, Richmond, VA 23219, (804) 771–2100, ext. 3839, TTY Number: (804) 771–2038.

HUD—GREENSBORO HUB; GREENSBORO OFFICE: Asheville Building, 1500 Pinecroft Road, Suite 401, Greensboro, NC 27407–3838, (336) 547–4000, TTY Number: (336) 547–4020.

COLUMBIA OFFICE: Strom Thurmond Federal Building, 13th Floor, 1835–45, Assembly Street, Columbia, SC 29201–2480, (803) 765–5592, TTY Number: (803) 253–3209.

HUD—JACKSONVILLE HUB; JACKSONVILLE OFFICE: Charles Bennett Federal Building, Suite 1015, 400 West Bay Street, Jacksonville, FL 32202, (904) 232–2626, TTY Number: (904) 232–2631.

BIRMINGHAM OFFICE: Medical Forum Building, 950 22nd Street, North, Suite 900, Birmingham, AL 35203–5301, (205) 731–2630, TTY Number: (205) 731–2624.

JACKSON OFFICE: Doctor A.H. McCoy Federal Building, Suite 910, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–4700, TTY Number: (601) 965–4171.

HUD—CHICAGO HUB, CHICAGO OFFICE: Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, 23rd Floor, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–5944.

HUD—BUFFALO HUB; BUFFALO OFFICE: Lafayette Court Building, 2nd Floor, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, ext. 5000, TTY Number: (716) 551–5787.

HUD—PHILADELPHIA HUB; PHILADELPHIA OFFICE: The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0609, TTY Number: (215) 656–3452.

CHARLESTON OFFICE: 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332.

NEWARK OFFICE: One Newark Center, Thirteenth Floor, Newark, NJ 07102–5260, (973) 622–7900, TTY Number: (973) 645–3298.

PITTSBURGH OFFICE: 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2507, (412) 644–6428, TTY Number: (412) 644–5747.

HUD—ATLANTA HUB; ATLANTA OFFICE: ATTN: Multifamily Housing, 12th Floor, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–2806, (404) 331–4976, TTY Number: (404) 730–2654.

SAN JUAN OFFICE: Edificio Administracion de Terrenos, 171 Carlos Chardon Avenue, Suite 301, San Juan, PR 00918–0903, (787) 766–5401, TTY Number: (787) 766–5104.

LOUISVILLE OFFICE: 601 West Broadway, Room 110, Louisville, KY 40202, (502) 582–5251, TTY Number: (866) 800–028

KNOXVILLE OFFICE: John J. Duncan Federal Building, Third Floor, Room #315, 710 Locust Street, Knoxville, TN 37902–2526, (423) 545–4384, TTY Number: (423) 545–4559.

NASHVILLE OFFICE: 235 Cumberland Bend, Suite 200, Nashville, TN 37228–1803, (615) 736–5213, TTY Number: (866) 503–0264.

HUD—DETROIT HUB; DETROIT OFFICE: Patrick V. McNamara Federal Building, 477 Michigan Avenue, Suite 1635, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899.

HUD—COLUMBUS HUB; COLUMBUS OFFICE: 200 North High Street, 7th Floor, Columbus, OH 43215–2499, (614) 469–5737, TTY Number: (614) 469–6694.

CLEVELAND OFFICE: U.S. Bank Centre, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–4058, TTY Number: (216) 522–2261.

HUD—MINNEAPOLIS HUB; MINNEAPOLIS OFFICE; 920 Second Avenue South, Suite 1300, Minneapolis, MN 55402–4012, (612) 370–3051, TTY Number: (612) 370–3186

INDIANAPOLIS OFFICE: 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303, ext. 6482 or 6831.

HUD—FT. WORTH HUB; LITTLE ROCK OFFICE: TCBY Tower, Suite 900, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931, TTY Number: (501) 324–5931.

NEW ORLEANS OFFICE: Hale Boggs Federal Building, Ninth Floor, 500 Poydras Street, New Orleans, LA 70130–3099, (504) 589–7200, TTY Number: (504) 589–7279.

FT. WORTH OFFICE: 801 Cherry Street, PO Box 2905, Fort Worth, TX 76113–2905, (817) 978–5965, TTY Number: (817) 978–5595.

HOUSTON OFFICE: 1301 Fannin, Suite 2200, Houston, TX 77002, (713) 718–3199, TTY Number: (713) 718–3289.

SAN ANTONIO OFFICE: 106 South St. Mary's, Suite 405, San Antonio, TX 78205, (210) 475–6800, TTY Number: (210) 475–6885.

HUD—DENVER HUB; DENVER OFFICE: UMB Bank Building, 23rd Floor, 1670 Broadway, Denver, CO 80202, (303) 672–5343, TTY Number: (303) 672–5113.

HUD—SAN FRANCISCO HUB; PHOENIX OFFICE: One North Central, Suite 600, Phoenix, AZ 85004, (602) 379–7149, TTY Number: (602) 379–4557.

SAN FRANCISCO OFFICE: 600 Harrison Street, 3rd Floor, San Francisco, CA 94107–1300, (414) 436–8356, TTY Number: (415) 436–6594.

HONOLULU OFFICE: 500 Ala Moana Boulevard, Suite 3A, Honolulu, HI 96813, (808) 522–8185, TTY Number: (808) 522–8193.

MILWAUKEE OFFICE: Henry S. Reuss Federal Plaza, Suite 1380, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214, ext. 8673, TTY Number: (414) 297–1423.

HUD—KANSAS CITY HUB; DES MOINES OFFICE: Federal Building, Room 239, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4583, TTY Number: (515) 284–4728.

KANSAS CITY OFFICE: Gateway Tower II, Room 200, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462, TTY Number: (913) 551–6972.

OMAHA OFFICE: Executive Tower Centre, Suite 100, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3122, TTY Number: (402) 492–3183.

ST. LOUIS OFFICE: Robert A. Young Federal Building, Third Floor, 1222 Spruce Street, Room 3203, St. Louis, MO 63103–2836, (314) 539–6583, TTY Number: (314) 539–6331.

OKLAHOMA CITY OFFICE: 301 N.W. 6th, Suite 200, Oklahoma City, OK 73102, (405) 609–8410, TTY Number: (405) 609–8480.

HUD—LOS ANGELES HUB; LOS ANGELES OFFICE: 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3106, (213) 894–8000, TTY Number: (213) 894–8133.

HUD—SEATTLE HUB; PORTLAND OFFICE: 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (971) 222–2600, TTY Number: (971) 222–0357.

SEATTLE OFFICE: 909 First Avenue, Seattle, WA 98104–5254, (206) 220–5241, TTY Number: (206) 220–5254.

[FR Doc. 06–4207 Filed 5–1–06; 4:00 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922-C–13]

Privacy Act of 1974; Notice of a Computer Matching Program; Correction

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program between HUD and the Department of Justice (DOJ); correction.

SUMMARY: On April 5, 2006, HUD published a notice of its intent to conduct a recurring computer matching program with DOJ. HUD inadvertently stated that computer matching was expected to begin 30 days after publication of the notice in the **Federal Register**. This notice corrects this error. Computer matching is expected to begin on July 19, 2006.

FOR FURTHER INFORMATION CONTACT: From Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P8001, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY is available at 1–800–877–8339 (Federal Information Relay Service).

Source Agency Contact: Diane E. Watson, Debt Collection Management, Nationwide Central Intake Facility (NCIF), Department of Justice, 1110 Bonifant Street, Suite 220, Silver Spring, MD 20910–3358, telephone number (301) 585–2391. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 5, 2006, HUD issued a public notice of its intent to conduct a recurring computer matching program with DOJ to utilize a computer information system of HUD, the Credit Alert Interactive Verification Reporting System (CAIVRS), with DOJ's debtor files.

Subsequent to publication of the April 5, 2006, notice, HUD discovered that an incorrect date was given for the computer matching program to begin. Computer matching is expected to begin on July 19, 2006.

In the **Federal Register** of April 5, 2006, in FR Doc. E6–4886, on page 17129, in the second column, correct the ''Dates'' caption to read:

DATES: *Effective Date:* Computer matching is expected to begin July 19, 2006, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: June 5, 2006.

Dated: April 25, 2006.

Lisa Schlosser,

Chief Information Officer.

[FR Doc. E6–6714 Filed 5–3–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–79030]

Notice of Realty Action: Lease/Conveyance For Recreation and Public Purposes Act Classification of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 5 acres of public land in Clark County, Nevada. The Church Jesus Christ of Latter Day Saints (Church) proposes to use the land for a church and related facilities.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until June 19, 2006.

ADDRESSES: Send written comments to the Field Manager, BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, Assistant Field Manager, Bureau of Land Management, Las Vegas Field Office, at (702) 515–5062.

SUPPLEMENTARY INFORMATION: On September 2, 2004, the Church filed an R&PP Act application for 5 acres of public land to be developed as a church and related facilities. These related facilities include a multipurpose building (a worship center, offices, classrooms, nursery, kitchen, restrooms, utility/storage rooms, and a lobby), sidewalks, landscaped areas, paved parking areas, and off site improvements. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–79030 located in the BLM Las Vegas Field Office at the above address. A Notice of Realty Action was previously published and the land segregated with a slightly different legal description on July 28, 2005 (70 FR 43704). The Church proposes to use the following described public land for a church and related facilities:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 11, SE¼NE¼NW¼SE¼, NE¼SE¼NW¼SE¼,

Containing 5 acres, more or less.

Churches are a common applicant under the ''public purposes'' provision of the R&PP Act. The Church is an Internal Revenue Service registered non-profit organization and is therefore, a qualified applicant under the R&PP Act. The land is not required for any federal purpose.

The lease/conveyance is consistent with the Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

On May 4, 2006, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Comments

Classification Comments: Interested parties may submit comments involving the suitability of the land for a church and related facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective July 3, 2006. The lands will not be offered for lease/conveyance until after the classification becomes effective.

On May 4, 2006, the R&PP classification and segregation will terminate and the following lands will be opened to the operation of the public land laws:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 11, NW¼SE¼NW¼SE¼.

Authority: 43 CFR Part 2741.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. E6–6716 Filed 5–3–06; 8:45 am]

BILLING CODE 4310–HC–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRCs regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.201, ''Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to Their Safety Significance,'' which is being issued for trial use, describes a method that the NRC staff considers acceptable for use in complying with the Commission's requirements in Title 10, section 50.69, of the *Code of Federal Regulations* (§ 50.69), with respect to the categorization of structures, systems, and components (SSCs) that are considered in risk-informing special treatment requirements. This categorization method uses the process that the Nuclear Energy Institute (NEI) described in Revision 0 of its guidance document NEI 00–04, ''10 CFR 50.69 SSC Categorization Guideline,'' dated July 2005.[1] Specifically, this process determines the safety significance of SSCs and categorizes them into one of four risk-informed safety class (RISC) categories.

The NRC has promulgated regulations to permit power reactor licensees and license applicants to implement an alternative regulatory framework with respect to ''special treatment,'' where special treatment refers to those requirements that provide increased assurance beyond normal industrial practices that SSCs perform their design-basis functions. Under this framework, licensees using a risk-informed process for categorizing SSCs according to their safety significance can remove SSCs of low safety significance from the scope of certain identified special treatment requirements.

The genesis of this framework stems from Option 2 of SECY–98–300, ''Options for Risk-Informed Revisions to 10 CFR Part 50, 'Domestic Licensing of Production and Utilization Facilities','' dated December 23, 1998.[2] In that Commission paper, the NRC staff recommended developing risk-informed approaches to the application of special treatment requirements to reduce

[1] NEI 00–04, ''10 CFR 50.69 SSC Categorization Guideline,'' is available through the NRC's Agencywide Documents Access and Management System (ADAMS), *http://www.nrc.gov/reading-rm/adams/ web-based.html,* under Accession #ML052910035.

[2] Commission papers cited in this notice are available through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/,* and the related **Federal Register** notices are available through the **Federal Register** Web site sponsored by the Government Printing Office (GPO) at *http://www.gpoaccess.gov/fr/index.html.*

unnecessary regulatory burden related to SSCs of low safety significance by removing such SSCs from the scope of special treatment requirements. The Commission subsequently approved the NRC staff's rulemaking plan and issuance of an Advanced Notice of Proposed Rulemaking (ANPR) as outlined in SECY–99–256, ''Rulemaking Plan for Risk-Informing Special Treatment Requirements,'' dated October 29, 1999.

The Commission published the ANPR in the **Federal Register** (65 FR 11488) on March 3, 2000, and subsequently published a proposed rule for public comment (68 FR 26511) on May 16, 2003. Then, on November 22, 2004, the Commission adopted a new section, referred to as § 50.69, within Title 10, part 50, of the *Code of Federal Regulations,* on risk-informed categorization and treatment of SSCs for nuclear power plants (69 FR 68008).

The NRC issued a draft of this guide, Draft Regulatory Guide DG–1121, for public review and comment as part of the § 50.69 rulemaking package in May 2003. The staff subsequently received and addressed public comments in developing the previous revision of this guide, which the agency published in January 2006, and has since incorporated additional stakeholder comments in preparing the current revision. However, since this is a new regulatory approach to categorizing SSCs, and to ensure that the final guidance adequately addresses lessons learned from the initial applications, the NRC decided to issue this guide for trial use. Therefore, this trial regulatory guide does not establish any final staff positions for purposes of the Backfit Rule, 10 CFR 50.109, and may continue to be revised in response to experience with its use. As such, any changes to this trial guide prior to staff adoption in final form will not be considered to be backfits as defined in 10 CFR 50.109(a)(1). This will ensure that the final regulatory guide adequately addresses lessons learned from regulatory review of pilot and follow-on applications, and that the guidance is sufficient to enhance regulatory stability in the review, approval, and implementation of probabilistic risk assessments (PRAs) and their results in the risk-informed categorization process required by § 50.69.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, at (301) 415–5144.

Requests for technical information about Revision 1 of Regulatory Guide 1.201 may be directed to Donald G. Harrison at (301) 415–3587 or via e-mail to *DGH@nrc.gov.*

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Electronic copies of Revision 1 of Regulatory Guide 1.201 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession #ML061090627.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 1st day of May, 2006.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–6747 Filed 5–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences; Fiscal Year 2005; Dissemination Of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress annually. During fiscal year 2005, 9 events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreements States were determined to be AOs. The report describes three events at facilities licensed by the NRC. All three events occurred at medical institutions. The first event involved a patient who received the incorrect dose distribution while undergoing therapeutic brachytherapy [1] treatment. The second event involved an infant who was administered the incorrect diagnostic dosage of technetium-99m. The third event involved three patients who received unintended radiation doses to the skin of their thighs while undergoing therapeutic treatment. The report also addresses 6 AOs at facilities licensed by Agreement States. [Agreement States are those States that have entered into formal agreements with the NRC pursuant to section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA licensed material at facilities located within their borders.] Currently, there are 34 Agreement States. During Fiscal Year 2005, Agreement States reported six events that occurred at Agreement State-licensed facilities, including five therapeutic medical events and one diagnostic medical event. All six events met the criteria for AO categorization. As required by section 208, the

[1] Brachytherapy means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by placement of sources on the body surface, in natural body cavities, or by placement directly in tissues.

discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 28, ''Report to Congress on Abnormal Occurrences, Fiscal Year 2005.'' This report will be available electronically at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

Nuclear Power Plants

During this period, no events at U.S. nuclear power plants were significant enough to be reported as AOs.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

During this period, no events at U.S. fuel cycle facilities were significant enough to be reported as AOs.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, etc.)

During this reporting period, three events at NRC-licensed or regulated facilities were significant enough to be reported as AOs.

05–01 Medical Event at the University of Minnesota in Minneapolis, Minnesota

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or to the gonads or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site will be considered for reporting as an AO.

Date and Place—January 24, 2005, Minneapolis, Minnesota.

Nature and Probable Consequences—The licensee reported that a patient being treated for cervical cancer received an incorrect dose distribution. One area of the cervix received 8.21 Gy (821 rads) instead of the intended 16.43 Gy (1,643 rads). Another area of the cervix received 3.72 Gy (372 rads) instead of the intended 4.65 Gy (465 rads). Additionally, other locations received higher than intended doses. The intended doses to the bladder and the rectum were 11.47 Gy (1,147 rads) each, but they received 14.48 Gy (1,448 rads) and 20.12 Gy (2,012 rads), respectively. The treatment involved an applicator with an insert which contained low-dose radiotherapy sources. The licensee cut the insert 6 centimeters (cm) too short so that when the applicator was positioned in the patient's cervix, the three cesium-137 (Cs-137) sources were not extended the proper distance. The referring physician and patient were informed of this event. The licensee does not believe that this event will have any adverse health effects on the patient. The patient subsequently received a follow-up treatment to deliver the full intended dose to the treatment sites.

Cause(s)—This event was caused by human error. The incorrect dose was administered to the incorrect location.

Actions Taken to Prevent Recurrence—Corrective actions taken by the licensee included stopping all low dose-rate treatments until all individuals are trained, and modifying their procedures to incorporate a dual verification system.

This event is closed for the purpose of this report.

05–02 Medical Event at St. Johns Mercy Hospital in St. Louis, Missouri

Criterion I.A.2, ''For All Licensees,'' of Appendix A to this report states, ''Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual total effective dose equivalent (TEDE) of 50 millisieverts (mSv) (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more,'' will be considered for reporting as an AO.

Date and Place—March 9, 2005, St. Louis, Missouri.

Nature and Probable Consequences—The licensee reported that a 5-month old infant was prescribed 18.5 MBq (0.5 mCi) of technetium-99 metastable (Tc-99m), but instead received 414.4 MBq (11.2 mCi) of Tc-99m. Hospital personnel did not look at the dosage label to verify the dose to be administered. The whole body dose to the infant was calculated to be between 0.052 to 0.10 Sv (5.2 to 10 rem). The physician informed the infant's parents. The NRC's medical consultant determined that there were no acute or subacute effects noted in the patient, but recommended that a pediatric gastroenterologist monitor the patient for cancer for an extended period of time.

Cause(s)—The event was caused by human error. The hospital staff member did not look at the dosage label before administering the radiopharmaceutical.

Actions Taken to Prevent Recurrence—Corrective actions taken by the licensee involved revision of their procedures to require dual verification of all dosages to be administered to children and retraining the staff on the new procedures.

This event is closed for the purpose of this report.

05–03 Medical Event at St. Joseph Regional Medical Center in South Bend, Indiana

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or to the gonads or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site will be considered for reporting as an AO.

Date and Place—Between January 26 and March 22, 2004 (reported March 25, 2005 due to a misinterpretation of reporting requirements by the licensee), South Bend, Indiana.

Nature and Probable Consequences—The licensee reported in March and April 2005, that between January 26 and March 22, 2004, three patients received unintended radiation doses to the skin of their thighs from cesium-137 brachytherapy sources. The vaginal applicator used for the treatments was loaded with incorrectly sized cesium-137 sources, which migrated from the intended treatment position through the placement spring when the patient moved to a more up-right position. As a result of the sources moving, the patient's inner thighs received unintended doses of radiation. Approximately two weeks after treatment, the patients developed skin lesions on their inner thighs. The licensee determined that these patients received unintended doses to a small area of the skin on the upper thigh of approximately 2000, 1500, and 2000 cGy (rad), respectively. Based on clinical observations, the licensee determined that all patients received the respective prescribed doses to the intended treatment areas. The referring physician and patients were notified of the event. The licensee referred the patients to other institutions and care providers for specialized followup wound care to treat the recurring skin ulcerations. The NRC retained a medical consultant during the inspection associated with the event. The long-term health effects on the patients, as a result of the unintended doses, is unknown.

Cause(s)—The causes of these events were improper source selection, inadequate manufacturer instructions, inadequate management oversight, and inadequate procedures.

Actions Taken to Prevent Recurrence—Corrective actions taken by the licensee involved modifying the applicator by using different hardware to hold the sources in place, revising

their procedures, and retraining the staff on the new procedures.

This event is closed for the purpose of this report.

Agreement State Licensees

During this reporting period, six events at Agreement State-licensed facilities were significant enough to be reported as AOs.

AS 05–01 Iridium-192 Brachytherapy Seed Medical Event at LDS Hospital in Salt Lake City, Utah

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site, will be considered for reporting as an AO.

Date and Place—October 26, 2004; LDS Hospital; Salt Lake City, Utah.

Nature and Probable Consequences—A patient received 27.56 Gy (2,756 rads) instead of the prescribed 5 Gy (500 rads) during a high dose-rate (HDR) treatment for larynx cancer. The event involved an iridium-192 (Ir-192) source with an activity of 244.2 GBq (6.6 Ci). The error was caused by the use of the diameter instead of the radius of a circular tool to mark the treatment site in a computer software program. As a result, the area treated was 2 centimeters (cm) away from the intended treatment site. The error was discovered before the third fraction. The prescribing physician stopped the treatment until dosimetry information was completed. The licensee notified the patient and the patient's referring physician of the event. The licensee determined that the impact of the additional dose is probable acute radiation effects and possible late or chronic toxicities.

Cause(s)—This event was caused by human error. The incorrect size button corresponding to the circle tool was used, which caused the diameter instead of the radius to be used in the dosing plan. This caused the incorrect dose to be administered to the incorrect location.

Actions Taken To Prevent Recurrence

Licensee—The licensee suggested that the software manufacturer print the word ''RADIUS'' on the ''size'' button located adjacent to the circle tool. To date, the manufacturer has not responded to this issue. The licensee will measure the distance on the brachytherapy device's hard copy output with a ruler to confirm that the distance is entered correctly. The licensee also modified the HDR dose check program so that, in addition to confirming the doses to coordinates entered into the device's input, user specified point coordinates may be manually entered into the check program and compared to what is calculated.

State Agency—The Utah Division of Radiation Control investigated the event on November 3, 2004 and approved the corrective actions that the licensee implemented to prevent the recurrence.

This event is closed for the purpose of this report.

AS 05–02 Diagnostic Medical Event at Baystate Health Systems in Springfield, Massachusetts

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered by the wrong treatment mode, will be considered for reporting as an AO.

Date and Place—January 7, 2005; Baystate Health Systems; Springfield, Massachusetts.

Nature and Probable Consequences—The licensee reported that a patient should have received 0.63 MBq (0.017 mCi) of iodine-131 (I-131) for a thyroid uptake study but instead received 133.2 MBq (3.6 mCi) of I-131 for a total body scan. A nuclear medicine technologist incorrectly placed the order for a total body scan instead of a thyroid uptake study without looking at the diagnosis. The I-131 was administered and it was later discovered that the wrong procedure was administered. The administration resulted in a thyroid dose of 131 Gy (13,100 rads). The patient and referring physician were notified of the error. The licensee indicated there would be no negative health effects from this administration because the patient had hyperthyroidism, thus, the unintended thyroid dose will be taken into account when additional I-131 is given to the patient.

Cause(s)—Human error in that the procedure was erroneously posted as a total body scan when it was actually a thyroid uptake study. This caused the wrong quantity of I-131 to be administered.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions taken by the licensee involved modifying procedures to include removing Central Booking from radioisotope ordering (the referring physician will fax the order directly to Nuclear Medicine), switching from I-131 to I-123 for thyroid uptake studies, and revising the nuclear medicine request form for thyroid procedures.

State Agency—The State reviewed and approved the corrective actions taken by the licensee and will follow-up at the next inspection.

This event is closed for the purpose of this report.

AS 05–03 High Dose-Rate Afterloader Medical Event at Saddleback Memorial Medical Center in Laguna Hills, California

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site will be considered for reporting as an AO.

Date and Place—January 24–28, 2005; Saddleback Memorial Medical Center; Laguna Hills, California.

Nature and Probable Consequences—A patient undergoing therapeutic radiation treatment following a breast lumpectomy was treated with a high dose-rate (HDR) device using an iridium-192 (Ir-192) source with an activity of 277.5 GBq (7.5 Ci). The prescribed dose was 35 Gy (3,500 rads) to the inside of the breast at the site of the excised tumor, but instead the patient received 70 Gy (7,000 rads) to other portions of the breast during treatment. The unintended irradiation occurred when the HDR device was mispositioned. Re-evaluation of the treatment plan revealed that the wrong source wire travel distance was used during the treatment. The Ir-192 source was positioned 8 centimeters (cm) short of the planned location. The licensee believes the error occurred when the source wire travel distance was input to the HDR device; however, since no record was maintained of the source wire travel distance measured by the therapy technologist, this could not be verified. It is known that the incorrect distance was input to the HDR planning system. The patient and the referring physician were notified of the event. No long-term health effects are expected due to the unplanned tissue dose.

Cause(s)—This event was attributed to human error and an inadequate procedure.

Actions Taken to Prevent Recurrence

Licensee—A procedure was developed specifying the need to verify and document the verification of source wire travel distance determination and training on the correct input to the treatment planning system was performed. In addition, nominal source wire travel distances for expected types of HDR usage were added to the form utilized for recording the HDR treatment quality assurance checklist, thus providing a check on the determination of this parameter.

State Agency—State inspectors investigated the medical event and issued written violations for failure to follow a license condition that required independent verification of HDR treatment data input, and for failure to report the medical event to the state within 24 hours of its discovery. The State reviewed the licensee's corrective actions and found them adequate to prevent recurrence.

This event is closed for the purpose of this report.

AS 05–04 Yttrium-90 Therapeutic Medical Event at University of Wisconsin in Madison, Wisconsin

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site will be considered for reporting as an AO.

Date and Place—April 5, 2005; University of Wisconsin in Madison; Madison, Wisconsin.

Nature and Probable Consequences—A patient was administered a 1.78 GBq (48 mCi) dose of yttrium-90 (Y-90), instead of the intended 1.04 GBq (28 mCi) Y-90 dose. As a result of the medical event, the patient received a dose of 1.07 to 3.20 Gy (107 to 320 rads) to the red bone marrow, with a median exposure of 2.31 Gy (231 rads) from Y-90. The error was discovered on April 7, 2005, during a licensee review of records. The patient and referring physician were notified of the event. The licensee indicated there will be no negative health effects from this administration.

Cause(s)—Lack of management oversight which attributed to failure to prepare a written directive prior to the administration, a poor training program, and human error.

Actions Taken to Prevent Recurrence

Licensee—The licensee suspended the use of Y-90 and conducted a root cause investigation of the event. The licensee's corrective actions included writing new policies and procedures, implementing new training programs, and hiring new personnel.

State Agency—The State of Wisconsin investigated the event on April 11, 2005 and determined that the licensee (1) failed to prepare a written directive prior to administering the Y-90, (2) failed to prevent usage of a dose that differed from the intended dosage by more than 20 percent, (3) failed to establish appropriate administrative procedures, (4) failed to ensure radiation safety activities were performed under approved procedures, and (5) failed to instruct individuals working under the supervision of an authorized user of the licensee's written directive procedures. A medical consultant contracted by the State of Wisconsin determined that no adverse medical effects occurred as a result of this medical event. As a result of the State's investigation, the licensee implemented the corrective actions detailed above. The State reviewed the licensee's corrective actions and found them adequate to prevent recurrence.

This event is closed for the purpose of this report.

AS 05–05 Therapeutic Medical Event at University of Utah in Salt Lake City, Utah

Criterion IV, ''For Medical Licensees,'' of Appendix A to this report states, in part, that a medical event that results in a dose that is (1) equal to or greater than 1 Gy (100 rads) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1,000 rads) to any other organ; and represents a prescribed dose or dosage that is delivered to the wrong treatment site, will be considered for reporting as an AO.

Date and Place—August 4, 2005; University of Utah; Salt Lake City, Utah.

Nature and Probable Consequences—A patient received radiation therapy to the left bronchus using a high dose-rate (HDR) device. The HDR contained a 252 GBq (6.81 Ci) iridium-192 (Ir-192) source. The prescribed radiation therapy treatment plan called for three treatments to the left bronchus, each fraction to deliver a dose of 7 Gy (700 rads). The medical event, which occurred during the second treatment, was due to a 3-centimeter (cm) error in the source wire travel distance. The source wire distance was entered incorrectly by a medical physicist. As a result, a 3 cm length of the left bronchus received approximately 6.40 to 18.60 Gy (640 to 1,860 rads) at a 0.5 cm depth and 2.54 to 6.62 Gy (254 to 662 rads) at a 1 cm depth. A 3-cm region next to the intended treatment site received up to 6 Gy (600 rads) less than the prescribed dose. The licensee notified the patient and the patient's referring physician of the event. The patient received no adverse health effects from the medical event.

Cause(s)—This event was attributed to human error in that the treatment site was not verified.

Actions Taken to Prevent Recurrence

Licensee—The licensee implemented a new procedure adding a question to verify the treatment distances during HDR treatments.

State Agency—The State has reviewed and accepted the licensee's corrective actions. This event is closed for the purpose of this report.

AS 05–06 Dose to Fetus at Riverside Methodist Hospital in Columbus, Ohio

Criterion I.A.2, ''For All Licensees,'' of Appendix A to this report states, ''Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual total effective dose equivalent (TEDE) of 50 millisieverts (mSv) (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more,'' will be considered for reporting as an AO.

Date and Place—November 2 and November 16, 2004; Riverside Methodist Hospital; Columbus, Ohio.

Nature and Probable Consequences—On November 2, 2004, a patient was administered 7.59 MBq (0.205 mCi) of iodine-123 (I-123) as part of a diagnostic procedure for hyperthyroidism. On November 16, 2004, the patient returned for a therapeutic treatment and was administered 469.9 MBq (12.7 mCi) of iodine-131 (I-131) as treatment. Prior to this administration, the patient was counseled regarding pregnancy and acknowledged, in writing, that she was not and could not be pregnant at that time. A pregnancy test was not performed to confirm this declaration. Later, the patient saw her physician because of abdominal pain. A radiograph of the abdomen revealed the pregnancy. A prenatal specialist determined that the fetus was 17 weeks old at the time of the I-131 administration. The dose estimate for the fetus was 0.024 Gy (2.04 rads) to the whole body and 224 Gy (22,400 rads) to the fetal thyroid from both I-123 and I-131 administrations. The perinatal specialist performed a blood test on the fetus and confirmed that the fetus had hyperthyroidism. An ultrasound test on the fetus showed no abnormalities in fetal development. The perinatal specialist will perform treatments in-

utero to mitigate the effects of hyperthyroidism. The referring physician and patient were notified of the medical event.

Cause(s)—The cause of the event was human error. At the time of the administration, the patient was unaware of her pregnancy status and completed forms indicating that she was not pregnant.

Actions Taken to Prevent Recurrence

Licensee—The licensee has implemented a policy performing a serum pregnancy test and receiving the results within 80 hours of administration of therapeutic amounts of I-131. This test will be performed on all women 13 to 50 years of age, unless the women have been surgically sterilized.

State Agency—The Ohio Department of Health performed an on-site investigation on January 28, 2005 and determined that the licensee followed all required procedures. The State agency will conduct periodic inspections to ensure that the licensee's actions taken to prevent recurrence were implemented.

This event is closed for the purpose of this report.

Dated at Rockville, Maryland this 28th day of April, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6-6746 Filed 5–3–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 5383]

Notice of Proposal To Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material From the Pre-Columbian Cultures and Certain Ethnological Material From the Colonial and Republican Periods of Bolivia

The Government of the Republic of Bolivia has informed the Government of the United States of its interest in an extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia, which entered into force on December 7, 2001.

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Memorandum of Understanding is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/culprop*.

Dated: April 21, 2006.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–6773 Filed 5–3–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5384]

Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee on Thursday, June 8, 2006, from approximately 9 a.m. to 5 p.m., and on Friday, June 9, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia. The Government of the Republic of Bolivia has notified the Government of the United States of America of its interest in such an extension.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act and subject Memorandum of Understanding, as well as related information may be found at *http://exchanges.state.gov/culprop*. Portions of the meeting on June 8 and 9 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). However, on June 8, the Committee will hold an open session from approximately 10 a.m. to 11:30 a.m., to receive oral public comment on the proposal to extend. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 453–8800 by Thursday, June 1, 2006, 3 p.m. (EDT) to arrange for admission. Seating is limited.

Those who wish to make oral presentations at the public session should request to be scheduled and must submit a written text of the oral comments by May 24 to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee and must specifically address the determinations under section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above.

The Committee also invites written comments and asks that they be submitted no later than May 24 to allow time for distribution to Committee members prior to the meeting. All written materials, including the written texts of oral statements, may be faxed to (202) 435–8803. If five pages or more, 20 duplicates of written materials must be sent by express mail to: Cultural Heritage Center, Department of State, Annex 44, 301 4th Street, SW., Washington, DC 20547; tel: (202) 453–8800.

Dated: April 21, 2006.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–6756 Filed 5–3–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5387]

Notice of Meeting United States International Telecommunication Advisory Committee

The Department of State announces a meeting of the ITAC. The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the meeting of the ITU Radiocommunication Sector's Special

Committee on Regulatory/Procedural Matters that will take place December 4–8, 2006 in Geneva, Switzerland. ITAC meetings will be convened on June 6, July 18, and August 15 2006 from 1 to 3 p.m. at the Boeing Company, 1200 Wilson Blvd., Arlington, VA. That is one-half block from the Rosslyn Metrorail station on the Orange and Blue lines.

Members of the public will be admitted to the extent that seating is available and may join in the discussions subject to the instructions of the Chair. Entrance to 1200 Wilson Blvd. is controlled. Persons planning to attend the meeting should arrive early enough to complete the entry procedure. One of the following current photo identifications must be presented to gain entrance to 1200 Wilson Blvd.: U.S. driver's license with your photo on it, U.S. passport, or U.S. Government identification. Foreign nationals are required to pre-clear 24 hours in advance by contacting Keisha Findley at *keisha.m.findley@boeing.com* or 703–465–3680.

Dated: April 24, 2006.

Douglas R. Spalt,

International Communications and Information Policy, Department of State.

[FR Doc. E6–6765 Filed 5–3–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for the Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Cancellation of Environmental Impact Statement process.

SUMMARY: On July 31, 2001, the Federal Aviation Administration (FAA), Great Lakes Region, published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement (EIS) and hold a Public Scoping Meeting at Dayton International Airport (Volume 66, Number 135, FR 36821–36822). The EIS and Public Scoping Meeting were to address proposed runway shifts and extensions to runways 6R/24L and 18/36 at the airport. Three public scoping meetings were held on August 14, 15, and 16, 2001. Additional workshops to discuss purpose and need were held on June 4 and 5, 2002.

On March 20, 2006 the FAA received notification from the Dayton International Airport that it wished to cancel the EIS. As such, the FAA is hereby canceling the EIS process.

Point of Contact: Mr. Brad Davidson, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174 (734) 229–2900.

Issued in Detroit, Michigan, April 13, 2006.

Irene R. Porter,

Manager, Detroit Airport District Office, FAA, Great Lakes Region.

[FR Doc. 06–4188 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–24672]

Agency Information Collection Activities; Request for Comments; Changes to a Currently Approved Information Collection for Highway Safety Improvement Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for changes to a currently approved information collection titled Highway Safety Improvement Programs, which is summarized below under supplementary Information. FHWA is required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 3, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number 2006–24672 to the docket Clerk, via the following methods. Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; fax comments to 202/493–2251; or submit electronically at *http://dms.dot.gov.* All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Epstein, 202–366–2157, Office of Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control No: 2125–0025.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) amended Section 148 of Title 23 U.S.C. to establish a new ''core'' Highway Safety Improvement Program (HSIP) that provides funds to State Departments of Transportation (DOTs) to improve conditions at hazardous highway locations and hazardous railway-highway grade crossings on all public roads, including those maintained by Federal, State and local agencies. The existing provisions of Title 23 U.S.C. Sections 130, Railway-Highway Crossings Program, and 152, Hazard Elimination Program, as well as implementing regulations in 23 CFR 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 three reports related to the conduct and effectiveness of their HSIPs, that are to include information on: (a) Progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic crashes, injuries and fatalities [Sections 148(g) and 152(g)]; (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(g)], which will be used by FHWA to produce and submit biennial reports to Congress required on April 1, beginning April 1, 2006; and, (c) description of at least 5 percent of the State's highway locations exhibiting the most severe safety needs, including an estimate of the potential remedies, their costs, and impediments to their implementation other than cost for each of the locations listed (*i.e.* the ''5 percent report'') [Section 148(c)(1)(D)]. To be able to produce these reports, State DOTs must have crash data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, and determining the ''before'' and ''after'' crash experiences at HSIP project locations. This information provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels. Per SAFETEA–LU, State DOTs have much flexibility in the methodology they use to rank the relative severity of their public road locations in terms of

fatalities and serious injuries. The list of 5 percent of these locations exhibiting the most severe safety needs will result from the ranking methodology used, and may include roadway segments and/or intersections. For example, a State may compare its roadway locations against statewide average rates of fatalities and serious injuries per 100 million vehicle miles traveled for similar type facilities and determine that those segments whose rates exceed the statewide rates are the locations with the ''most severe'' safety needs, and then at least 5 percent of those locations would be included in the required annual report.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Estimated Average Burden per Response: 500 hours (This is an increase of 300 burden hours from the current OMB approved 200 burden hours. The new report will take an additional 300 hours plus the 200 hours for the existing two reports).

Estimated Total Annual Burden Hours: 25,500 hours (51 states at an average of 500 hours each).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–6729 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–06–24219]

Real-Time System Management Information Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; Request for comments.

SUMMARY: This notice requests comments on provisions and parameters for the Real-Time System Management Information Program contained in section 1201 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). This notice provides a high-level description of the program as envisioned by the FHWA, including proposed definitions for various program parameters.

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: Mail or hand deliver comments for the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit* or fax comments to (202) 493–2251.

Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov*. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Mr. Robert Rupert, Transportation Information Management Team, FHWA Office of Operations, (202) 366–2194, or via e-mail at *robert.rupert@fhwa.dot.gov*. For legal questions, interpretations and counsel, please contact Ms. Lisa MacPhee, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366–1392, or via e-mail at *lisa.macphee@fhwa.dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at *http://dms.dot.gov/submit*. Electronic submission and retrieval help and guidelines are available under the help section. Alternatively, Internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at *http://www.archives.gov* and from the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara*.

Background

Section 1201 of the SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144) requires the Secretary of Transportation to establish a Real-time System Management Information Program to provide, in all States, the capability to monitor, in real-time, the traffic and travel conditions of the major highways of the United States and to share that information to improve the security of the surface transportation system, to address congestion problems, to support improved response to weather events and surface transportation incidents, and to facilitate national and regional highway traveler information. The purposes of the Real-time System Management Information Program are to:

(1) Establish, in all States, a system of basic real-time information for managing and operating the surface transportation system;

(2) Identify longer range real-time highway and transit monitoring needs and develop plans and strategies for meeting such needs; and

(3) Provide the capability and means to share that data with State and local governments and the traveling public.

In addition, section 1201(b) requires that no later than August 10, 2007, the Secretary establish data exchange formats to ensure that the data provided by highway and transit monitoring systems, including statewide incident reporting systems, can readily be exchanged across jurisdictional boundaries, facilitating nationwide availability of information. Section 1201(c) states that as State and local governments develop or update regional intelligent transportation system architectures, described in section 940.9 of title 23, Code of Federal Regulations, such governments shall explicitly

address real-time highway and transit information needs and the systems needed to meet such needs, including addressing coverage, monitoring systems, data fusion and archiving, and methods of exchanging or sharing highway and transit information. States shall incorporate the data exchange formats established by the Secretary to ensure that the data provided by highway and transit monitoring systems may readily be exchanged with State and local governments and may be made available to the traveling public.

While the program description proposed in this notice relates to minimum parameters and requirements, the program should be expandable to additional highways and surface transportation facilities.

Purpose of This Notice

The purpose of this notice is to request comments and input to the proposed description of the Real-time System Management Information Program, including its outcome goals, definitions for various program parameters, and the current status of related activities in the States. These comments and input will be used in the development of program guidance for State and local governments' use in implementing systems under the Real-time System Management Information Program.

While there are questions presented on specific aspects of the Real-time System Management Information Program, comments and input may be offered on any part of this notice. In order to provide informed comments and input to some questions, it may be necessary to read the entire notice. To assist the reader in providing answers, the specific questions presented throughout the notice are summarized at the conclusion.

The primary audience for this notice is expected to be State and local departments of transportation that will develop and implement systems under the real-time system management information program. Other audiences for this notice include, but are not limited to, other local and regional transportation agencies engaged in managing and monitoring surface transportation systems in real-time, and agencies responsible for traffic incident management activities such as detection, response and clearance. Private sector firms that are involved in collecting and providing real-time system management information for surface transportation systems, either in concert with public transportation agencies or independently, may also be interested in providing input to this notice.

Real-Time System Management Information Program

Program Purpose

The purpose of the Real-time System Management Information Program is to provide the capability to monitor, in real-time, the traffic and travel conditions of the major highways of the United States and to share that information to improve surface transportation system security, address congestion, improve response to weather events and surface transportation incidents, and to facilitate national and regional highway traveler information.

Program Funding

A State may use its National Highway System, Congestion Mitigation and Air Quality Improvement program, and Surface Transportation Federal-aid program apportionments for activities related to the planning and deployment of real-time monitoring elements that advance the goals of the Real-time System Management Information Program. The FHWA has issued policy guidance, available at *http://www.ops.fhwa.dot.gov/travelinfo/resources/ops_memo.htm*, indicating that transportation system operations activities, such as real-time monitoring, are eligible under the major Federal-aid programs noted previously, within the requirements of the specific programs. State planning and research funds may also be used for activities relating to the planning of real-time monitoring elements.

Program Goals

By September 30, 2009, the Real-Time System Management Information Program shall:

(1) Establish, in all States, a system of basic real-time information for managing and operating the surface transportation system;

(2) Identify longer range real-time highway and transit monitoring needs and develop plans and strategies for meeting those needs; and

(3) Provide the capability and means to share the data with State and local governments and the traveling public.

Section 1201 does not specify a time frame for implementing the Real-time System Management Information Program. The FHWA proposes the implementation date of September 30, 2009, since it coincides with the expiration of the SAFETEA–LU authorization.

Questions: Does September 30, 2009 represent a reasonable time period for implementing the Real-time System Management Information Program? What potential obstacles would prevent program implementation by this date? What would be a reasonable time frame for implementing the program?

Program Outcomes

The Real-Time System Management Information Program shall result in:

(1) Publicly available traveler information Web site(s) providing access to information that is derived from the real-time information collected by the system established under the program;

(2) 511 Travel Information telephone service(s) providing to callers information that is derived from the real-time information collected by the system established under the program;

(3) Regional Intelligent Transportation System (ITS) Architectures updated to reflect the systems established under the program; and

(4) Access to the data collected by the system established under the program in an established data exchange format through standard Internet protocol (IP) communications links.

Outcomes (1) and (2) relate to commonly available methods used by public sector agencies to disseminate traffic and traveler information. Outcome (3) relates directly to a requirement in section 1201(c)(1) regarding regional ITS architectures. Outcome (4) relates to the use of common data exchange formats required by section 1201(c)(2).

Questions: Are the proposed outcomes appropriate for gauging the success of a system implemented under the program? What other measures for success would be useful?

Program Parameters

As part of describing the real-time system management information program, it is necessary to establish definitions for various parameters under the program. These parameters will define the content and context for systems developed and implemented under the program. As noted above under the program purpose, traffic and travel conditions of major highways are to be monitored in real-time. This notice proposes definitions for three principal terms used in describing the program's purpose—major highways, traffic and travel conditions, and real-time.

Major Highways

We propose that, as a minimum, major highways to be monitored by the systems implemented under the real-time system management information program include all National Highway

System (NHS) routes and other limited access roadways. In metropolitan areas, major arterials with congested travel should be included in the coverage areas of systems implemented under the Real-time System Management Information Program.

The NHS includes the Interstate Highway System as well as other roads important to the nation's economy, defense, and mobility. The NHS was developed by the DOT in cooperation with the States, local officials, and metropolitan planning organizations. More detailed information about the NHS is available from the FHWA at *http://www.fhwa.dot.gov/hep10/nhs/.* Because of the criteria under which the NHS was developed, it provides a sound foundation for the highways to be monitored under the program. Adding major arterials in metropolitan areas helps the program address congestion as noted in the purpose of the program.

Question: Is this proposed definition of ''major highways'' adequate and appropriate for the purposes of the Real-time System Management Information Program?

Traffic and Travel Conditions

We propose that the basic traffic and travel conditions to be monitored by systems implemented under the Real-time System Management Information program include:

—Road or lane closures because of construction, traffic incidents, or roadway weather conditions;
—Roadway weather or other environmental conditions restricting or adversely affecting travel;
—Extent and degree of congested conditions, *i.e.*, length of roadway experiencing stop-and-go or very slow (*e.g.*, prevailing speed of traffic less than half of speed limit) traffic;
—In metropolitan areas that experience recurring traffic congestion, travel times or speeds on limited access roadways; and
—In metropolitan areas that experience recurring traffic congestion, disruptions to public transportation services and facilities.

These basic traffic and travel conditions are based on work conducted by the National 511 Deployment Coalition (Coalition) in developing its guidelines for implementing 511 travel information telephone services. The Coalition guidelines are available from the 511 Deployment Coalition at *http://www.deploy511.org.* In general, the minimum conditions are intended to capture events and occurrences that reduce the capacity of highways (lane closures and adverse weather conditions) or present unsafe travel conditions (congestion). In congested metropolitan areas, the minimum conditions are enhanced through the addition of travel times and transit service disruptions as a way of capturing system performance.

Question: How well do the proposed traffic and travel conditions represent reasonable and appropriate basic requirements for the Real-time System Management Information Program?

Real-Time

Systems implemented under the real-time system management information program will monitor and reflect current traffic and travel conditions according to the following minimum criteria:

—Construction activities affecting travel conditions, such as implementing or removing lane closures, will be available as program information within 30 minutes of the change, with changes to be available within 15 minutes in metropolitan areas with frequent or recurring traffic congestion;
—Roadway or lane blocking traffic incident information will be available as program information within 15 minutes of the incident being detected or reported and verified;
—Roadway weather conditions are updated as program information no less frequently than 30 minutes;
—Traffic congestion information will be updated as program information no less frequently than 15 minutes; and
—Travel time information, when reported and available as program information, will reflect travel conditions occurring no older than 10 minutes.
—Public transportation service disruptions, when reported, will be updated as program information no less frequently than 30 minutes.

Since the Real-time System Management Information Program applies to all States, these minimum criteria reflect systems that employ manual entry of information. Systems that use more automated or integrated information entry processes may be able to reflect changes in conditions virtually immediately. These criteria are intended to present aggressive but realistic time frames for reporting and entering information including manual entry, remotely polled sensor stations, or calculation of values. The proposed criteria also consider the usefulness of the information to travelers, hence the decreased amount of time for recording construction activities in congested metropolitan areas.

Question: How well do the proposed criteria for determining real-time information represent reasonable and appropriate minimums for systems implemented under the Real-time System Management Information Program?

Information Quality

The quality of the real-time system management information depends on the techniques and technologies used to record the information. The Real-time System Management Information Program will not specify technologies or methods to be used to collect information; however, levels of quality for general attributes may be provided. The following proposed levels of quality for two attributes are based on the report ''Closing the Data Gap: Guidelines for Quality Advanced Traveler Information System (ATIS) Data'' that is available from the DOT at *http://www.itsdocs.fhwa.dot.gov/JPODOCS/REPT_MIS/13580.html* (Intelligent Transportation Society of America, ATIS Committee; September 2000).

Accuracy

Accuracy indicates how closely the recorded information matches the actual conditions. All sensors and data collection systems are subject to inaccuracies from situations such as physical obstructions, weather conditions, and radio frequency interference. The more accurate the data are, the higher the quality of information recorded by the system. This attribute is typically characterized using percentages, either as a percentage of accuracy or as an error percentage. For example, a system may be characterized as being 90 percent accurate or having a 10 percent error rate. This attribute is used to describe the average performance of the sensors or data collection system. The FHWA is considering proposing that systems implemented under the real-time system management information program are to be 85 percent accurate at a minimum, or have a maximum error rate of 15 percent.

Availability

Availability indicates how much of the data designed to be collected is made available. While sensors and data collection systems are usually designed to operate continuously, inevitably a user of the data will lose access from time to time. This attribute describes the average probability that a given data element will be available for use from a particular sensor or data collection system. For example, if a sensor records average speeds at a specific point over five minute intervals, 12 data points are generated each hour. Over the course of

a year, 105,120 data points should be recorded; however, if 2,100 data points were not available for use over the course of the year, the availability would be 98 percent. This attribute essentially combines factors such as sensor or system reliability, maintenance responsiveness, and fault tolerance into a single measure related to data output. The better the traffic sensor data collection system is designed, operated and maintained, the higher the availability. The FHWA is considering proposing that systems implemented under the Real-time System Management Information Program are to have 90 percent availability at a minimum.

Question: How well do these proposed attributes present reasonable minimum requirements for systems implemented under the Real-time System Management Information Program? Are any other minimum requirements necessary?

Data Exchange Formats

Section 1201(b) requires that within two years of the date of enactment of SAFETEA–LU, the Secretary of Transportation is to establish data exchange formats to ensure that the data provided by highway and transit monitoring systems, including statewide incident reporting systems, can be readily exchanged to facilitate nationwide availability of information. States shall also incorporate these data exchange formats in the systems they implement to support the Real-time System Management Information Program. If after development, the data exchange formats are officially adopted through rulemaking by the DOT, part 940 of title 23, Code of Federal Regulations, requires in section 940.11(f) that all ITS projects funded with highway trust funds shall use the applicable DOT-adopted ITS standards.

Because of the array of available technical standards for data communication, the exchange formats may not require additional standards to be developed. Standards developed for center-to-center communications and for traveler information will form the basis of the exchange formats. The FHWA will assess the standards to identify the elements most important for information to be exchanged under the program. Among the standards to be assessed and analyzed are:

—Standard for Traffic Incident Management Message Sets for Use by Emergency Management Centers (EMC), Institute of Electrical and Electronics Engineers (IEEE) P1512.1;
—Standard for Common Incident Management Message Sets (IMMS) for use by EMCs, IEEE P1512–2000;
—Standard for Public Safety IMMS for use by EMCs, IEEE P1512.2;
—Standard for Hazardous Material IMMS for use by EMCs, IEEE P1512.3;
—Standard for Functional Level Traffic Management Data Dictionary, Institute of Transportation Engineers (ITE) TM 1.03;
—Message Sets for External Transportation Management Center Communication (MS/ETMCC), ITE TM 2.01;
—Transit Communication Interface Protocol (TCIP) Traffic Management Business Area Standard, ITE TS 3.TM;
—National Transportation Communications for ITS Protocol (NTCIP) Center-to-Center Naming Convention Specification, NTCIP 1104;
—NTCIP Object Definitions for Environmental Sensor Stations (ESS), NTCIP 1204;
—NTCIP Weather Reports Message Set for ESS, NTCIP 1301;
—TCIP—Standard on Common Public Transportation Objects, NTCIP 1401;
—TCIP—Standard on Incident Management Objects, NTCIP 1402;
—TCIP—Standard on Passenger Information Objects, NTCIP 1403;
—TCIP—Standard on Scheduling/Runcutting Objects, NTCIP 1404;
—TCIP—Standard on Spatial Representation Objects, NTCIP 1405;
—NTCIP Transport Profile for Internet, NTCIP 2202;
—NTCIP Application Profile for File Transfer Protocol, NTCIP 2303;
—NTCIP eXtensible Markup Language (XML) in ITS Center-to-Center Communications, NTCIP 2306;
—Location referencing Message Specification, Society of Automotive Engineers (SAE) J2266;
—Data Dictionary for Advanced Traveler Information System (ATIS), SAE J2353;
—Message Set for ATIS, SAE J2354;
—National Location Referencing Information Report, SAE J2374;
—Rules for Standardizing Street Names and Route Identification, SAE J2529; and
—Messages for Handling Strings and Look-Up Tables in ATIS Standards, SAE J2540.

More information about these standards is available at *http://www.standards.its.dot.gov/*.

Existing Reporting Capabilities

While all States collect various data periodically to support national reporting requirements, such as the Highway Performance Monitoring System, a number of States currently have systems that provide information that, at some level, is comparable to that proposed for the Real-time System Management Information Program. As of March 2006, there are 28 systems that provide travel information through ''511'' telephone services that are operating in 24 States. Virtually every State department of transportation operates an Internet Web site that offers some highway condition information to the public. There are pooled fund efforts among States that have developed highway condition and reporting systems. Some State departments of transportation that have developed statewide reporting systems to serve as inventories or databases to keep track of the agency's roadway construction and maintenance activities.

The Real-time System Management Information Program will be developed to take advantage of the existing reporting and information sharing capabilities, and build upon them where applicable. In addition, the Real-time System Management Information Program should complement current transportation performance reporting systems by making it easier to gather or enhance required information. To ensure that the most current status information is used, responders are requested to answer the following questions:

Questions

What system is currently employed by the State department of transportation or other public agency to inventory highway conditions such as construction and maintenance activities, traffic incidents, traffic flow, or other real-time performance of the roadways?

What types of information are recorded by the reporting system, *i.e.*, what traffic or travel conditions are recorded?

How is the reported information provided to the public?

How broadly is the reported information shared with neighboring jurisdictions or other agencies?

What data or communications standards are used by the reporting systems, either for recording information or for sharing information?

Resources Available from FHWA

The FHWA is committed to helping achieve the goals and outcomes of the Real-time System Management Information Program. The FHWA offers a number of resources to assist States as they consider, develop and deploy real-time monitoring systems:

—FHWA Division Offices, located in each State, provide assistance in developing and approving projects;
—The FHWA Resource Center provides technical assistance for systems architecture, standards, integration and system operations to States, metropolitan planning organizations, and local jurisdictions;
—The Peer-to-Peer Program offers various ways for States and others to exchange knowledge and provide assistance on specific aspects of real-time system information; and
—FHWA Web sites for Traveler Information (*http://www.ops.fhwa.dot.gov/travelinfo/*), ITS Architecture (*http://www.ops.fhwa.dot.gov/its_arch_imp/*), and Standards Implementation (*http://www.ops.fhwa.dot.gov/int_its_deployment/standards_imp/standards.htm*) provide information relevant to real-time system management information.

Summary of Questions

A summary of the specific questions posed in this notice follows. Responders are reminded that comments and input may be offered on any part of this notice.

—Does September 30, 2009, represent a reasonable time period for implementing the real-time system management information program? What potential obstacles would prevent program implementation by this date? What would be a reasonable time frame for implementing the program?
—Are the proposed outcomes—traveler information Web sites, 511 traveler information telephone services, updated regional ITS architectures, and access to data over the Internet—appropriate for gauging the success of a system implemented under the program? What other measures for success would be useful?
—Is the proposed definition of ''major highways'' adequate and appropriate for the purposes of the Real-time System Management Information Program?
—How well do the proposed traffic and travel conditions represent reasonable and appropriate basic requirements for the Real-time System Management Information Program?
—How well do the proposed criteria for determining real-time information represent reasonable and appropriate minimums for systems implemented under the Real-time System Management Information Program?
—How well do the proposed quality attributes of the information present reasonable minimum requirements for systems implemented under the Real-time System Management Information Program?
—What system is currently employed by the State department of transportation or other public agency to inventory highway conditions such as construction and maintenance activities, traffic incidents, traffic flow, or other real-time performance of the roadways?
—What types of information are recorded by the reporting system, *i.e.*, what traffic or travel conditions are recorded?
—How is the reported information provided to the public?
—How broadly is the reported information shared with neighboring jurisdictions or other agencies?
—What data or communications standards are used by the reporting systems, either for recording information or for sharing information?

Issued on: April 28, 2006.

Frederick G. Wright, Jr.,

Executive Director, Federal Highway Administration.

[FR Doc. E6–6741 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2006–03

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Vertical Load Dividers.

SUMMARY: FRA is issuing Safety Advisory 2006–03, in order to provide interested parties information related to the potential failure of the welded attachment of vertical load dividers on certain center beam lumber flat cars. The welded attachment of the vertical load dividers on these cars can break away from the car body structure. The vertical load dividers are hollow square tubular steel beams approximately eight (8) feet in height that are welded to the car body structure. The vertical beams serve as load dividers for packaged lumber products.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division (RRS–14), FRA Office of Safety Assurance and Compliance, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6241 or Thomas Herrmann, Deputy Assistant Chief Counsel, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6036.

SUPPLEMENTARY INFORMATION: FRA was recently made aware of the weld failure of a vertical load divider on center beam lumber flat car GWRC 52850. The failure occurred while the car was traveling on the main line of the Long Island Railroad. One of the vertical load divider beams detached (broke away) at its base from the main car body and came to rest on a Long Island Railroad passenger station platform (See Figure 1). This incident occurred on August 31, 2005, and resulted in no injuries. A post accident analysis of the weld attachment of the vertical load divider beam revealed poor and insufficient weld of the vertical load divider beams at time of original car construction. The involved car is one of five (5) center beam lumber flat cars owned by the Georgia Woodlands Railroad Company. As a result of this incident, Georgia Woodlands Railroad Company had the vertical load divider beams on all five of its cars re-welded and reinforced with support gussets to prevent the dividers from breaking in the area of the original weld.

FRA has reviewed ownership records of 52-foot, 8-inch, center beam flat cars and recommends that the 579 cars, identified below, receive an inspection and repair, if necessary, of the welded attachment of the vertical load dividers to prevent a potential catastrophic event. The following cars have been identified as having the potential for weld failures:

Car type	Car numbers	AAR car type	GRL, lbs.	Number of cars
52′–8″ C-Beam Flat	BCOL 52100–52454	F–281	220 k	347
52′–8″ C-Beam Flat	BCOL 52650–52801	F–281	220 k	141
52′–8″ C-Beam Flat	BCOL 52802–52900	F–281	220 k	91

Recommended Action: In recognition of the need to assure safety, FRA recommends that railroads and car owners carefully inspect the welded attachment of the vertical load divider on center beam lumber flat cars. The best inspection of the welded attachment would include the use of a dye penetrant type procedure to thoroughly detect weld cracks. FRA further recommends that cars found with poor or defective welds be repaired by using new welds and gussets in accordance with good quality control shop practices.

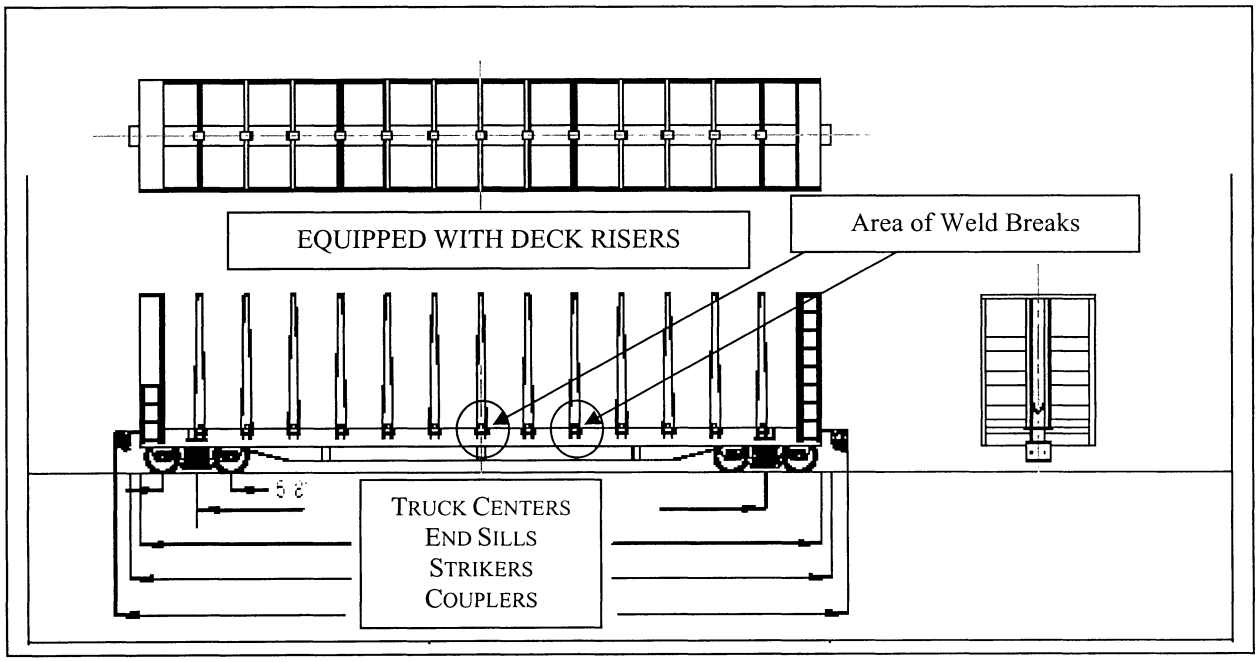
Car owners are encouraged to voluntarily take action to inspect and repair any center beam lumber flat cars that may be equipped with welded vertical load dividers. Failure of car owners to voluntarily take action consistent with the above recommendations may result in FRA pursuing other corrective measures to enforce public safety under its rail safety authority. FRA may modify Safety Advisory 2006–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the nation's railroads.

Issued in Washington, DC on April 27, 2006.

Jo Strang,

Associate Administrator for Safety.

BILLING CODE 4910–06–P



Drawing of Vertical Load Dividers on BCOL Center Beam Flat Cars Highlighting Area of Weld Breaks at Base of Divider Beams

Figure 1

[FR Doc. 06–4173 Filed 5–3–06; 8:45 am]

BILLING CODE 4910–06–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 28, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 5, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0169.
Type of Review: Extension.
Title: Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application of Master or Prototype Plan, Mass Submitter Adopting Sponsor.
Form: IRS 4461, 4461–A and 4461–B.
Description: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code Section 501(a).
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 109,298 hours.

OMB Number: 1545–0205.
Type of Review: Extension.
Title: Corporate Report of Nondividend Distributions.
Form: IRS 5452.
Description: Form 5452 is used by corporations to report their nontaxable distributions as required by IRC 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.
Respondents: Business or other for-profit and Farms.
Estimated Total Burden Hours: 50,830 hours.

OMB Number: 1545–0820.
Type of Review: Extension.
Title: REG–122917–02 (NPRM) Statutory Options (Previously EE–86–88(LR–279–81).
Description: The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise of a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filling their tax return.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 16,650 hours.

OMB Number: 1545–0887.
Type of Review: Extension.
Title: Information Return for Publicly Offered Original Issue Discount Instruments.
Form: IRS 8281.
Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having OID. The information is used to update Pub. 1212, List of Original Issue Discount Instruments.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 3,060 hours.

OMB Number: 1545–1086.
Type of Review: Extension.
Title: Excise Tax on Greenmail.
Form: IRS 8725.
Description: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Section 5881. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 92 hours.

OMB Number: 1545–01241.
Type of Review: Extension.
Title: PS–92–90 (Final) Special Valuation Rules.
Description: Section 2701 of the Internal Revenue Code allows various electronics by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interest and the retained interests.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 496 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.
OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Michael A. Robinson,
Treasury PRA Clearance Officer.

[FR Doc. E6–6734 Filed 5–3–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions

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 the Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before July 3, 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: Voluntary Customer Surveys To Implement E.O. 1262 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.
OMB Number: 1545–1432.
Abstract: This form is a generic clearance for an undefined number of customer satisfaction and opinion

surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, is not determined what these surveys and focus groups will be.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 372,359.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 50,000.

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: April 26, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–6721 Filed 5–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 1, 2006 from 11 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, June 1, 2006, from 11 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: April 27, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–6722 Filed 5–3–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 86

Thursday, May 4, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

Correction

In notice document E6–6263 appearing on page 24757 in the issue of Wednesday, April 26, 2006, make the following correction:

In the center column, in the fourth full paragraph, in the fourth and fifth lines, ''245120 years B.P.'' should read ''245 ± 120 years B.P.''.

[FR Doc. Z6–6263 Filed 5–3–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Correction

In notice document E6–4351 appearing on page 15219 in the issue of Monday, March 27, 2006, make the following correction:

In the second column, in the third full paragraph, in the last line, ''May 1, 2006'' should read ''May 26, 2006''.

[FR Doc. Z6–4351 Filed 5–3–06; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 71, No. 86

Thursday, May 4, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

25483–25738 1
25739–25918 2
25919–26188 3
26189–26408 4

CFR PARTS AFFECTED DURING MAY

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:
8007 25735
8008 25917
8009 26183
8010 26185
8011 26187

Executive Orders:
12820 (Revoked by EO 13401) 25737
13067 (See EO 13400) 25483
13400 25483
13401 25737

7 CFR

56 26189
305 25487
319 25487
1001 25495
1005 25495
1006 25495
1007 25495
1030 25495
1032 25495
1033 25495
1124 25495
1126 25475
1131 25495
1924 25739

10 CFR

72 25740

Proposed Rules:
50 26267
53 26267
72 25782
430 26275

12 CFR

611 25919
612 25919
614 25919
615 25919
620 25919
1412 25743

14 CFR

25 26189
39 ..... 25744, 25919, 25921, 25924, 25926, 25928, 25930, 26191
73 26194
97 ..... 25932, 26196

Proposed Rules:
39 ..... 25510, 25783, 25785, 25787, 25789, 25793, 25984, 25987, 26282
71 26284

15 CFR

774 25746

16 CFR

Proposed Rules:
310 25512

18 CFR

35 26199
37 26199
38 26199

21 CFR

210 25747

22 CFR

1100 25934

23 CFR

Proposed Rules:
657 25516
658 25516

26 CFR

1 25747

27 CFR

4 25748
19 25752
40 25752

Proposed Rules:
9 25795

30 CFR

Proposed Rules:
917 25989
942 25992

31 CFR

103 26213

32 CFR

275 26220

33 CFR

100 ..... 26225, 26227, 26229
165 26230
207 25502

Proposed Rules:
100 ..... 25523, 25526, 26285, 26287
117 26290
151 25798
165 ..... 26292, 26294

36 CFR

7 26232

Proposed Rules:
Ch. I 25528
242 25528

40 CFR

Ch. I 25504
63 25753

80 25706
180 ....25935, 25942, 25946, 25952, 25956, 25962

Proposed Rules:
50 26296
51 26296
52 ....25800, 26297, 26299
63 ....25531, 25802
80 25727
81 26299
180 ....25993, 26000, 26001

42 CFR

Proposed Rules:
411 25654
414 25654
424 25654

47 CFR

1 26245
64 25967
73 ....25980, 25981
97 25981

Proposed Rules:
15 26004
73 ....26006, 26310

48 CFR

52 25507
Ch. 30 25759

49 CFR

Proposed Rules:
27 25544
37 25544
38 25544
541 25803

50 CFR

648 25781
660 26254
679 ....25508, 25781

Proposed Rules:
13 25894
17 ....26007, 26311, 26315
23 25894
100 25528
216 25544
660 25558
680 25808

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 MAY 4, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Shell eggs; voluntary grading; eligibility requirements

Correction; published 5-4-06

ENVIRONMENTAL PROTECTION AGENCY

Solid waste:

Resource Conservation and Recovery Act Burden Reduction Initiative; published 4-4-06

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Gulf Island National Seashore, FL and MS; personal watercraft use; published 5-4-06

STATE DEPARTMENT

Exchange Visitor Program:

Secondary School Student Exchange Program; published 4-4-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 3-30-06

Boeing; published 3-30-06

Bombardier; published 3-30-06

Standard instrument approach procedures; published 5-4-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Organic and nonorganic product use (livestock) Harvey v. Johanns; revisions; comments due by 5-12-06; published 4-27-06 [FR 06-04006]

Olives grown in California; comments due by 5-12-06; published 3-13-06 [FR 06-02367]

Potato research and promotion plan; comments due by 5-8-06; published 3-7-06 [FR 06-02117]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Freedom of information and public information:

Meat or poultry product recalls; retail consignees; lists availability; comments due by 5-8-06; published 3-7-06 [FR 06-02125]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands king and tanner crab; comments due by 5-9-06; published 4-24-06 [FR E6-06030]

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, crab, salmon and scallop; comments due by 5-8-06; published 3-22-06 [FR 06-02706]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 5-11-06; published 4-11-06 [FR 06-03468]

COMMODITY FUTURES TRADING COMMISSION

Securities futures products:

Debt securities indexes and security futures on debt securities; application of narrow-based security index definition; comments due by 5-10-06; published 4-10-06 [FR 06-03188]

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:

Simplified acquisition procedures financing; comments due by 5-12-06; published 3-13-06 [FR E6-03518]

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; comments due by 5-8-06; published 3-23-06 [FR 06-02703]

Air programs:

Ambient air quality standards, national—

Exceptional events; data treatment; comments due by 5-9-06; published 3-10-06 [FR 06-02179]

Stratospheric ozone protection—

Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03461]

Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03462]

Essential use allowances allocation; comments due by 5-11-06; published 4-11-06 [FR E6-05329]

Air quality implementation plans:

Preparation, adoption, and submittal—

8-hour ozone national ambient air quality standard; implementation; public hearing; comments due by 5-12-06; published 3-27-06 [FR 06-02909]

Preparation, adoption, submittal—

Corn milling facilities; prevention of significant deterioration, nonattainment new source review; comments due by 5-8-06; published 3-9-06 [FR 06-02148]

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 5-12-06; published 4-12-06 [FR 06-03405]

California; comments due by 5-11-06; published 4-11-06 [FR 06-03401]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ethylenediaminetetraacetic acid chemicals; comments due by 5-8-06; published 3-8-06 [FR 06-02106]

Flumiclorac pentyl; comments due by 5-8-06; published 3-8-06 [FR 06-02151]

Spinosad; comments due by 5-8-06; published 3-8-06 [FR 06-01939]

Toxic substances:

Chemicals of interest to Occupational Safety and Health Administration; in vitro dermal absorbtion rate testing requirements; comments due by 5-12-06; published 4-12-06 [FR 06-03491]

Polymer premanufacture notification exemption rule—

Perfluorinated polymers; exclusion; comments due by 5-8-06; published 3-7-06 [FR 06-02152]

Significant new uses—

Perfluoroalkyl sulfonates; comments due by 5-10-06; published 4-10-06 [FR 06-03400]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telephone Consumer Protection Act; implementation; comments due by 5-11-06; published 4-26-06 [FR E6-06022]

Radio stations; table of assignments:

Arkansas and Missouri; comments due by 5-8-06; published 4-12-06 [FR E6-05110]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Orthopedic devices—

Intervertebral body fusion device; reclassification; comments due by 5-10-06; published 2-9-06 [FR E6-01736]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Dominican Republic-Central America Free Trade Agreement:

Preferential tariff treatment; retroactive application; comments due by 5-8-06; published 3-7-06 [FR 06-02070]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Massachusetts; comments due by 5-8-06; published 4-6-06 [FR E6-04900]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Indian housing block grant program; self-insurance plans; comments due by 5-8-06; published 3-7-06 [FR E6-03186]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Flat-tailed horned lizard; comments due by 5-8-06; published 4-21-06 [FR E6-05895]

Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; regulations revision; comments due by 5-12-06; published 4-12-06 [FR E6-05223]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

Emergency health plan discontinuance; comments due by 5-8-06; published 3-7-06 [FR 06-02081]

Correction; comments due by 5-8-06; published 3-10-06 [FR C6-02081]

SECURITIES AND EXCHANGE COMMISSION

Securities futures products:

Debt securities indexes and security futures on debt securities; application of narrow-based security index definition; comments due by 5-10-06; published 4-10-06 [FR 06-03188]

SOCIAL SECURITY ADMINISTRATION

Federal claims collection:

Federal salary offset; comments due by 5-12-06; published 3-13-06 [FR E6-03509]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 5-11-06; published 4-11-06 [FR E6-05246]

Bombardier; comments due by 5-9-06; published 3-10-06 [FR 06-02236]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 5-11-06; published 4-11-06 [FR 06-03440]

Honeywell; comments due by 5-8-06; published 3-8-06 [FR E6-03260]

McDonnell Douglas; comments due by 5-12-06; published 3-28-06 [FR E6-04443]

Short Brothers; comments due by 5-8-06; published 4-12-06 [FR E6-05357]

Airworthiness standards:

Special conditions—

Airbus Model A380-800 airplane; comments due by 5-12-06; published 3-28-06 [FR 06-02973]

Airbus Model A380-800 airplane; comments due by 5-12-06; published 3-28-06 [FR E6-04494]

Cessna Model 510 series airplanes; comments due by 5-8-06; published 4-6-06 [FR 06-03294]

Transport category airplanes—

Fuel tank flammability reduction; comments due by 5-8-06; published 11-23-05 [FR 05-23109]

Fuel tank flammability reduction; comments due by 5-8-06; published 3-21-06 [FR E6-04025]

Airworthiness standards:

Special conditions—

McDonnell Douglas Model DC-8-72F airplanes; comments due by 5-11-06; published 4-11-06 [FR 06-03423]

Class E airspace; comments due by 5-8-06; published 3-24-06 [FR 06-02878]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property; public hearing; comments due by 5-8-06; published 2-7-06 [FR 06-01038]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act; implementation—

Money services businesses; banking services provision; comments due by 5-9-06; published 3-10-06 [FR E6-03373]

Dominican Republic-Central America Free Trade Agreement:

Preferential tariff treatment; retroactive application; comments due by 5-8-06; published 3-7-06 [FR 06-02070]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Informed consent; time period extension and witness requirement modification for signature consent; comments due by 5-8-06; published 3-9-06 [FR E6-03290]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4979/P.L. 109–218

Local Community Recovery Act of 2006 (Apr. 20, 2006; 120 Stat. 333)

Last List April 17, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.