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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0117]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding counties in Illinois, Indiana, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas. In addition, we are designating the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. Finally, we are adding the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: This interim rule is effective October 3, 2006. We will consider all comments that we receive on or before December 4, 2006.

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

Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0117 to submit or view public comments and to view supporting and

related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0117, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0117.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During “shoot feeding,” young beetles tunnel into the center of pine shoots (usually of the current year’s growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far

from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), larch (*Larix* spp.) and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that 17 counties in Illinois, Indiana, New Jersey, New York, Iowa, and Ohio are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are designating Jo Daviess and Stark Counties, IL; Dearborn County, IN; Dubuque and Scott Counties, IA; Bergen, Hunterdon, Passaic, Sussex, and Warren Counties, NJ; Columbia, Orange, and Ulster Counties, NY; and Highland, Jackson, Ross, and Scioto Counties, OH, as quarantined areas, and we are adding

them to the list of quarantined areas in § 301.50–3(c).

As noted previously, the regulations provide that, for less than an entire State to be designated as a quarantined area, the State must have adopted and be enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles. The States of Michigan and Pennsylvania have contained, respectively, 75 and 39 counties designated as quarantined areas in the regulations. However, those States have notified APHIS that they no longer wish to enforce a quarantine and regulations on the intrastate movement of regulated articles within their borders. In addition, the States of Massachusetts and Minnesota have recently detected PSB within their borders, and have notified APHIS that they do not wish to enforce an intrastate quarantine. Therefore, we are amending § 301.50–3(c) to designate the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas.

Although there has been no detection of PSB in Connecticut or Rhode Island, the beetle has been detected in the remainder of New England and in the surrounding States. PSB has been moving by natural spread east and west from the original infested area in Ohio since 1992. It is reasonable to believe that PSB may already be present in Connecticut and Rhode Island, as they both have highly developed urban areas, and low quantities of host material, such that the population level of the beetle would be too low to detect. The States of Connecticut and Rhode Island have requested that APHIS designate both States as quarantined areas. Therefore, we are amending § 301.50–3(c) to designate the States of Connecticut and Rhode Island, in their entirety, as quarantined areas.

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of

this interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the PSB regulations by adding counties in Illinois, Indiana, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas, by designating the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions, and by adding the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States.

Entities affected by this rule may include nurseries, Christmas tree farms, logging operations, moving companies

and others who sell, process, or move regulated articles interstate from these areas. As a result of this rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit. This action will help prevent the artificial spread of the pest to new areas, and consequently avoid economic damage to timber, nursery, and Christmas tree producers in areas that could become infested if no action were taken.

Certain pine products will not be allowed to be shipped during certain months of the year or will be required to undergo debarking before transport occurs. Enterprises such as Christmas tree farms, nurseries and greenhouses, sawmill and logging operations, and others in the newly designated PSB quarantined areas wishing to move regulated articles from these areas may be affected by compliance requirements, however, costs associated with issuance of certificates and limited permits are borne by the issuing agency.

APHIS has identified approximately 12,684 entities which sell, process, or move forest products in these 17 counties and 6 States that may be impacted by this rule (table 1). Of these entities, there were approximately 8,800 which were producing nursery and greenhouse crops, and 3,884 Christmas tree farms in 2002. In addition, an unknown number of sawmills and logging operations in the newly quarantined counties process pine tree products. According to information previously collected by APHIS, pine trees and pine tree products such as cut Christmas trees sold in these areas largely remain within the regulated areas. Nurseries and greenhouses specialize in production of deciduous landscape products rather than production of rooted pine Christmas trees and pine nursery stock. The latter products in general constitute a small part of their production, if they are produced at all. Therefore, the rule is not likely to affect most nurseries and greenhouses.

TABLE 1.—2002 VALUE OF SALES AND NUMBER OF ENTITIES SELLING NURSERY CROPS AND CUT CHRISTMAS TREES

Newly quarantined States and counties	Number of nursery and greenhouse farms	2002 market value of products sold (\$1,000)	Number of cut Christmas tree and short rotation woody crops farms	2002 market value of products sold (1,000)	Number of sawmills (NAICS code 321113) ¹
Connecticut	685	\$245,773	382	\$3,407	19
2 counties in Illinois	14	856	5	22	unknown
1 county in Indiana	17	443	2	(D) ²	unknown
2 counties in Iowa	33	2,972	3	16	unknown
Massachusetts	902	153,540	306	1,800	37

TABLE 1.—2002 VALUE OF SALES AND NUMBER OF ENTITIES SELLING NURSERY CROPS AND CUT CHRISTMAS TREES—Continued

Newly quarantined States and counties	Number of nursery and greenhouse farms	2002 market value of products sold (\$1,000)	Number of cut Christmas tree and short rotation woody crops farms	2002 market value of products sold (1,000)	Number of sawmills (NAICS code 321113) ¹
Michigan	2,185	628,699	1,076	30,411	148
Minnesota	983	224,410	327	11,855	69
5 counties in New Jersey	403	47,609	345	1,505 + (D) ²	unknown
3 counties in New York	201	26,147	42	118 + (D) ²	unknown
4 counties in Ohio	77	4,220+(D) ²	10	NA	unknown
Pennsylvania	3,075	732,709	1,326	31,193	291
Rhode Island	225	37,593	60	658	8
Total	8,800	2,104,971+(D) ²	3,884	80,985	.....

Source: USDA, NASS, 2002 Census of Agriculture (Table 2, Market Value of Agricultural Products sold including Direct and Organic in 2002 by State and County Data and 2002 Economic Census, Geographical Area Series by State (Table 1, Industry Statistics for the State 2002, Manufacturing.)

¹ The number of sawmills is reported by State only and thus there are no numbers by county. The number of sawmills in the newly quarantined areas is bigger than 572 (i.e., the known number of sawmills for the 6 States) and smaller than 1,021 (i.e., the number of sawmills in all 12 States).

² (D): Amount has not been reported to avoid disclosure.

The Small Business Administration (SBA) has established size standards to determine when an entity is considered small. Nursery stock growers may be considered small when they have annual sales of \$750,000 or less, and Christmas tree growers may be considered small when they have annual sales of \$5 million or less.

The 2002 Agricultural Census does not report sales by entity size. However, from previously gathered information, APHIS expects that the majority of these entities are small by the SBA size standards.

Regulated articles from quarantined areas may be moved interstate if accompanied by a certificate or limited permit. A certificate for interstate movement of regulated articles from quarantined areas is issued by an inspector after it is determined that the regulated articles are not infested with PSB and do not present a risk of spreading PSB to other areas. A limited permit is issued by an inspector for the interstate movement of regulated articles from quarantined areas when they are to be moved to a specified destination for processing, handling or utilization and the movement will not result in the spread of PSB. Regulated articles must have the name of the consignor and consignee, as well as the certificate or limited permit, attached during all segments of interstate movement.

A request for a certificate or a limited permit must be made at least 48 hours prior to transporting the regulated articles interstate. The cost for this service falls upon the issuing agency, and not the person/business entity requesting the certificate/limited permit.

This rule designates newly quarantined areas for PSB. APHIS has identified approximately 8,800 nursery and greenhouse farms, 3,884 cut Christmas tree farms, and an unknown number of logging operations, in the newly quarantined 17 counties and 6 States. As noted previously, the movement of cut Christmas pine trees and pine tree products by these establishments is generally within the regulated counties and States. Thus, those farms, nurseries, logging operations, and other entities are expected to be little affected by this rule.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c) is amended as follows:

■ a. By adding, in alphabetical order, entries for Connecticut, Iowa, Massachusetts, Minnesota, New Jersey, and Rhode Island to read as set forth below.

■ b. By revising the entries for Michigan and Pennsylvania to read as set forth below.

■ c. In the entries for Illinois, Indiana, New York and Ohio, by adding new counties in alphabetical order to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Connecticut

The entire State.

Illinois

* * * * *

Jo Daviess County. The entire county.

* * * * *

Stark County. The entire county.

* * * * *

Indiana

* * * * *

Dearborn County. The entire county.

* * * * *

Iowa

Dubuque County. The entire county.*Scott County.* The entire county.

* * * * *

Massachusetts

The entire State.

Michigan

The entire State.

Minnesota

The entire State.

* * * * *

New Jersey

Bergen County. The entire county.*Hunterdon County.* The entire county.*Passaic County.* The entire county.*Sussex County.* The entire county.*Warren County.* The entire county.

New York

* * * * *

Columbia County. The entire county.

* * * * *

Orange County. The entire county.

* * * * *

Ulster County. The entire county.

* * * * *

Ohio

* * * * *

Highland County. The entire county.

* * * * *

Jackson County. The entire county.

* * * * *

Ross County. The entire county.

* * * * *

Scioto County. The entire county.

* * * * *

Pennsylvania

The entire State.

Rhode Island

The entire State

* * * * *

Done in Washington, DC, this 27th day of September 2006.

Elizabeth E. Gaston,*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6-16278 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV06-920-1 IFR]

**Kiwifruit Grown in California;
Relaxation of Container Marking
Requirements****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This rule relaxes the container marking requirements for kiwifruit covered under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). Currently, kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers must, be positive lot identified, which requires reinspection. This rule establishes procedures for handlers to ship such kiwifruit without positive lot identification (PLI), and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit.

DATES: Effective October 4, 2006.

Pursuant to the Paperwork Reduction Act, comments on the information collection burden that will result from this rule must be received by December 4, 2006 which will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail:

moab.docketclerk@usda.gov, or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT:

Shereen Marino, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: *Shereen.Marino@usda.gov*, or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed

not later than 20 days after the date of the entry of the ruling.

This rule relaxes the container marking requirements for kiwifruit covered under the order. Currently, kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers, must be positive lot identified, which requires reinspection. This rule establishes procedures for handlers to ship such kiwifruit without PLI. This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit. The Committee unanimously recommended this change at its April 6, 2006, meeting.

Section 920.52(a) of the order provides authority for grade, size, pack, container, and container marking requirements for shipments of fresh kiwifruit. Section 920.55 of the order requires inspection and certification of kiwifruit prior to shipment by Federal or Federal-State Inspection Service (FSIS). Section 920.302 of the order's regulations specifies applicable grade, size, pack, and container requirements and § 920.303 specifies applicable container marking requirements.

Paragraph (d) of § 920.303 requires that containers of kiwifruit be positive lot identified prior to shipment. PLI helps to ensure that a specific load or lot of kiwifruit can be linked to an inspection certificate and provides verification that the fruit was inspected. No less than 75 percent of the containers of kiwifruit on a pallet must be marked with a lot stamp number corresponding to the lot inspection conducted by the FSIS. This lot stamp number is a PLI number that can be matched to an inspection certificate. Individual consumer packages within a master container, and containers being directly loaded into a vehicle for export under FSIS supervision are exempt from PLI. Individual consumer packages placed directly on a pallet, and plastic containers of kiwifruit must be positive lot identified.

Currently, kiwifruit that has been inspected and certified, and is subsequently placed into new containers, must be positive lot identified. When such kiwifruit is placed into new containers, the PLI mark on the container is lost and thus the lot is not easily identified. The new containers must be reinspected and marked with a new PLI number. Reinspection costs for such kiwifruit account for roughly 20 percent of annual inspection costs for handlers.

In an effort to reduce handler costs, the Committee recommended establishing procedures for handlers to ship previously inspected kiwifruit

placed in new containers without PLI. Handlers will have the option of having such kiwifruit reinspected and marked with a PLI number or requesting a verification number under a new verification process. Such kiwifruit must be of the same grade and size as originally inspected. The handler must contact the FSIS to obtain a verification number prior to shipment, and plainly mark one end of each container with the letter "R" and the verification number. The letter "R" and the verification number must not be less than one-half inch in height. The handler must submit a Kiwifruit Verification Form to the FSIS within 3 business days of such request, and provide the following information from the original inspection: (i) The positive lot identification numbers; (ii) the identity of the handler; (iii) the inspection certificate numbers; (iv) the grade and size of the kiwifruit; (v) the number and type of containers; and (vi) the handler's brand; and the following information on the kiwifruit placed into new containers: (i) The number and type of containers; and (ii) the applicable brand. The verification number will be linked to the PLI number, thus providing a method to trace the fruit back to the original inspection certificate. The FSIS will maintain the Kiwifruit Verification Forms. The Committee will make use of completed forms to audit handlers as needed to ensure compliance, pursuant to authority provided in § 920.61.

Accordingly, a new paragraph (f) is added to § 920.303 that establishes the verification procedures described above. Additionally, a new sentence is added to the beginning of paragraph (d) in that section to clarify that except as provided in the new paragraph (f), containers of kiwifruit must be positive lot identified prior to shipment in accordance with specified requirements. Paragraph (d) is modified further for clarification purposes to change the term "lot stamp number" to "positive lot identified," and to change the term "plastic container" to "reusable plastic container."

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 37 handlers of kiwifruit subject to regulation under the marketing order and approximately 220 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. None of the 37 handlers subject to regulation have annual kiwifruit sales of \$6,500,000. In addition, six growers subject to regulation have annual sales exceeding \$750,000. Therefore, all of the kiwifruit handlers and a majority of the growers may be classified as small entities.

This rule relaxes the container marking requirements currently specified in § 920.303. Currently, kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers must be positive lot identified, which requires reinspection. This rule establishes procedures for handlers to ship such kiwifruit without PLI. This rule adds a new paragraph (f) to § 920.303 that establishes the verification procedures. Handlers must obtain a verification number from the FSIS, mark their new containers with such number and the letter "R," and submit a Kiwifruit Verification Form to the FSIS. The verification number can be linked to the original PLI number, thereby providing a method to trace the fruit back to the original inspection certificate. This action is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit. This rule also makes minor modifications to paragraph (d) of § 920.303 for clarification purposes. Authority for this action is provided in §§ 902.52(a)(3) and 920.55 of the order.

The impact of this change on handlers was discussed by the Committee. Reinspection costs due to current PLI requirements account for roughly 20 percent of annual inspection costs for the industry. Additionally, an average of 20 percent of the crop is placed into new containers annually. The following table shows inspection costs for in-line inspection, lot inspection, and kiwifruit placed into new containers for 2001 to 2005.

Year	In-line	Lot	New containers	Total cost
2001-02	\$107,702	\$15,254	\$38,411	\$161,367
2002-03	96,376	24,866	35,521	156,763
2003-04	111,228	12,064	29,197	152,489
2004-05	129,197	24,319	31,415	184,931

This change reduces inspection costs because handlers have the option of using the new verification process instead of having kiwifruit reinspected to conform to PLI requirements. Additionally, reinspection can delay shipments because kiwifruit cannot be shipped until reinspection has been completed by the FSIS.

The Committee considered the alternative of maintaining the status quo, but this was not viable. As an option to reinspection, identity of the lot can be achieved through the verification number, which provides a trace back to the original inspection certificate. Additionally, such kiwifruit has already met the minimum requirements of the marketing order. It is anticipated that the rule provides a cost savings to handlers.

This action imposes an additional reporting and recordkeeping burden on California kiwifruit handlers. This action requires a new Committee form that must be completed by handlers and provided to the FSIS. The information collection requirement is discussed later in this document. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 6, 2006, meeting was a public meeting and all entities, both large and small, were encouraged to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/maob.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting emergency approval from the Office of Management and Budget (OMB) for a new information collection request under OMB No. 0581-NEW. Upon approval by OMB, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189, "Generic OMB Fruit Crops." The emergency request was necessary because insufficient time was available to follow normal clearance procedures.

Title: Kiwifruit Grown in California, Marketing Order No. 920.

OMB No.: 0581-NEW.

Expiration Date of Approval: Emergency request.

Type of Request: New collection.

Abstract: The information collection requirement in this request is essential to provide handlers with a procedure to ship kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers without PLI.

On April 6, 2006, the Committee unanimously recommended relaxing the container marking requirements prescribed under the order. Currently, kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers must be positive lot identified, which requires reinspection. This rule establishes procedures for handlers to ship such kiwifruit without PLI. Kiwifruit handlers must submit a new Kiwifruit Verification Form to the FSIS and report information prior to shipment. On this form, handlers must report information from the original inspection certificate (PLI and inspection certification numbers, handler name, grade and size, number and type of containers, and brand), and information for such kiwifruit placed into new containers (number and type of container, and brand). The FSIS will assign verification numbers for lots of such kiwifruit in order to provide a trace back to the original inspection certificate. This action is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit.

The information collected is used only by authorized representatives of

USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees and agents of the Committee. Authorized Committee employees, agents, and the industry are the primary users of the information and AMS is the secondary user.

Kiwifruit Verification Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to be no more than .25 hour per response.

Respondents: Kiwifruit handlers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 150.

Estimated Total Annual Burden on Respondents: 1,125 hours.

Comments: Comments are invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the California kiwifruit marketing order, and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. As previously mentioned, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS is requesting emergency approval for the use of this form by October 11, 2006, because the season began August 1. As previously mentioned, upon OMB

approval, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In summary, this rule establishes procedures for handlers to ship kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers without PLI. This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit. The additional reporting requirement will contribute to the efficient operation of the program and assist in ensuring handler compliance with marketing order provisions. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined in good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be in place as soon as possible because the 2006-07 season began on August 1, 2006, and handlers will begin shipping kiwifruit by mid-September; (2) the Committee unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this rule relaxes requirements currently in effect and kiwifruit producers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601-674.

■ 2. In § 920.303, revise paragraph (d), and add a new paragraph (f) to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(d) Except as provided in paragraph (f) of this section, containers of kiwifruit must be positive lot identified prior to shipment in accordance with the following requirements. All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on the pallet, shall be positive lot identified with a plain mark corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet positive lot identified with a plain mark corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. Reusable plastic containers of kiwifruit, placed on a pallet, shall be positive lot identified in accordance with Federal or Federal-State Inspection Service procedures and shall have required information on the cards of the individual containers, as provided in this section of the regulations.

* * * * *

(f) Kiwifruit that has been inspected and certified, and is subsequently placed into new containers, does not have to be positive lot identified, as prescribed in paragraph (d) of this section: *Provided*, That:

(1) Such kiwifruit is of the same grade and size as originally inspected; and

(2) The handler requests a verification number from the Federal or Federal-State Inspection Service prior to shipment; plainly marks one end of each container with such number and the letter "R," both of which shall be at least one-half inch in height; and submits a Kiwifruit Verification Form to the Federal or Federal-State Inspection Service within 3 business days of such request. The handler shall provide the following information on the Kiwifruit Verification Form.

(i) From the original inspection:

(A) The positive lot identification numbers;

(B) The identity of the handler;

(C) The inspection certificate numbers;

(D) The grade and size of the kiwifruit;

(E) The number and type of containers; and

(F) The handler's brand; and

(ii) On the kiwifruit placed into new containers:

(A) The number and type of containers; and

(B) The applicable brand.

Dated: September 27, 2006.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E6-16279 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV06-955-1 FIR]

Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting and assessment requirements under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). This rule continues in effect the action that changed the reporting requirements for handlers from filing weekly shipment reports to monthly reporting. It also continues in effect a change in when assessments are due and how delinquent assessments are handled. These changes are expected to benefit handlers without negatively affecting program compliance.

DATES: *Effective Date:* November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA; telephone: (863) 324-3375, fax: (863) 325-8793, or e-mail: Doris.Jamieson@usda.gov, or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that revised the reporting and assessment requirements prescribed under the order. This rule continues in effect to change the reporting requirements for handlers from filing weekly shipment reports to monthly reporting. It also continues in effect to change when assessments are due and how delinquent assessments are handled. These changes are expected to

benefit handlers without negatively affecting program compliance. The Committee unanimously recommended these changes at a meeting on January 19, 2006.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Prior to this action, handlers were required to file weekly reports that included, among other things, the name and address of the handler, the period covered in the report, the total volume of Vidalia onions received by the handler, and the handler's total fresh market shipments.

Section 955.42 provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer the order. Section 955.42(f) provides the authority to impose a late payment charge or an interest charge or both, on any handler who fails to pay assessments in a timely manner and the authority to establish the time and rate of such charges. Section 955.142 of the rules and regulations outlines the procedures for applying interest charges to delinquent assessments.

This rule continues in effect the action that revised § 955.101 to require handlers to file shipping reports on a monthly basis rather than weekly. This rule also continues in effect the action that revised § 955.142 to specify when assessments are due and to adjust the way interest is applied to delinquent assessments.

Previously, § 955.101 required handlers to provide the Committee with information regarding the volume of Vidalia onions they received and shipped during each week of the shipping season. The shipping reports were to be filed no later than 4 p.m. on the Tuesday immediately following the shipping week. The Committee provided a form to assist handlers with supplying the required shipping information. Fresh Vidalia onions are primarily shipped from April through June with some limited shipments through December with the use of Controlled Atmosphere storage.

Handler reports are used by the Committee to calculate the assessments owed by each handler. When handler reports are not received in a timely manner, it delays the receipt of assessment payments and in turn, the collection process the Committee uses to pursue late payments. Thus, timely receipt of handler reports is important.

In 2002, the Committee changed from monthly reporting and assessment collection to weekly (67 FR 58511). This change was made to address the problems the Committee staff was experiencing in receiving monthly reports and assessment payments in a timely manner. The change was made in an effort to provide an earlier indication to Committee staff of potential problems with handlers not reporting or paying their assessments so these potential problems could be addressed before the amounts involved grew to significant levels.

After several seasons of weekly reporting, the Committee received requests from the industry to return to monthly reporting. It was reported that several handlers considered weekly reporting too cumbersome and unnecessary. In discussing this issue, Committee members stated that during harvest, handlers utilize all their resources to get the onions harvested and to market. They stated that weekly reporting is very time consuming and puts an additional burden on their staff to ensure weekly reports are submitted on time to avoid penalties and interest. In addition, many handlers do not ship onions every week of the season. Nevertheless, under the reporting requirements then in effect, handlers had to file a report each week.

Committee members recognized that monthly reporting would reduce Committee expenditures. The Committee also recognized that several adjustments have been made in the compliance and assessment collection process which have helped address some of the problems relating to late reporting and assessment collection. The Committee has implemented an electronic tracking system to ensure all reports and assessment payments are received from each handler. A database has been created with each handler's name and the date reports are due. As reports are received from each handler, the data is entered into the computer. A detailed report listing all handlers, the date reports are due, and whether all handlers have submitted reports for each due date can be generated to assist with compliance efforts. If a handler fails to file a report for a specific reporting date, the tracking report reflects that information. The handler can then be notified that a report is due.

The Committee has also hired a part-time compliance officer. The compliance officer visits handlers on a routine basis throughout the season to ensure compliance with the order, including the timely submission of reports and payment of assessments.

Further, the Committee's compliance plan has been modified to better address late reports and assessment payments. Consequently, the Committee follows up more rapidly on late reports and assessments. These efforts will help prevent an accumulation of a large assessment debt from handlers.

The Committee believes that the adjustments to its compliance and assessment collection process and the addition of a compliance officer better address the problems with late payment and reporting that were experienced previously during monthly reporting. Therefore, the Committee voted unanimously to return to monthly reporting.

This rule also continues in effect to revise the rules and regulations specifying when reports and assessments are to be received by the Committee office. Prior to this change, handler reports and assessments were both due at 4 p.m. the Tuesday immediately following the week in which the shipments were made. This action continues in effect to change §§ 955.101 and 955.142 to require that reports and assessments must be submitted to the Committee office by 5 p.m. on the fifth day of each month following a month of active shipping. Should the fifth day of the month fall on a weekend or holiday, payments and reports are due by the first business day prior to the fifth day of the month.

This rule also continues in effect to change the way delinquent assessments are handled to reflect the change to monthly reporting. Previously, § 955.142 specified that handlers must pay interest charges of 1 percent per week on any unpaid assessments and on any accrued unpaid interest beginning the day immediately after the date the weekly assessments were due, until the delinquent handler's assessments, plus applicable interest, had been paid in full. This rule continues in effect to revise § 955.142 by adjusting the way interest charges are applied so that interest accrues at 1 percent per month on any unpaid assessments and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments are due until the delinquent handler's assessments plus applicable interest has been paid in full.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of Vidalia onions in the production area and approximately 100 handlers of Vidalia onions who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

Based on the Georgia Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2005 season was around \$12 per 40-pound bag. Total Vidalia onion shipments for the 2005 season were around 3,571,500 40-pound bags. Using available data, more than 90 percent of Vidalia onion handlers could be considered small businesses under the SBA definition. In addition, based on acreage, production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule continues in effect the action that revised the reporting and assessment requirements prescribed under the order. This rule continues in effect to change the reporting requirements for handlers from filing weekly shipment reports to monthly reporting. It also continues in effect to change when assessments are due and how delinquent assessments are handled. These changes reduce the number of reports a handler must submit annually and are expected to benefit handlers without negatively affecting program compliance. This rule continues in effect to revise §§ 955.101 and 955.142. Authority for this action is provided for in §§ 955.42 and 955.60 of the order. This change was unanimously recommended by the Committee at a meeting held on January 19, 2006.

Requiring handlers to file shipping reports on a monthly basis rather than

weekly reduces the reporting burden on both small and large handlers. Fresh Vidalia onions are primarily shipped from April through June with some limited shipments through December. Therefore, total reporting requirements per handler for weekly reporting totaled around 60 minutes per handler annually (5 minutes per response times approximately 12 responses). This resulted in a total annual industry burden of about 100 hours (60 minutes per handler times 100 handlers).

Requiring handlers to report monthly decreases the annual burden on a handler to around 15 minutes annually (5 minutes per response times approximately 3 responses), for a total annual industry burden of approximately 25 hours (15 minutes times 100 handlers). Thus, the total annual burden for handlers is decreased by around 75 hours, which is expected to benefit all handlers.

This rule is not expected to result in any additional costs for handlers. This rule continues in effect to reduce the number of reports and assessment payments handlers are required to submit annually, which reduces the amount of time necessary for handlers to file reports and assessments.

It also continues in effect to reduce the amount of time required by the Committee staff to monitor shipping reports and assessment payments by reducing the number of submissions. Thus, this rule offers the potential for cost savings. The potential reduction in Committee costs would benefit all handlers regardless of their size. Consequently, the benefits of this rule are expected to be equally available to all.

The Committee did consider the alternative of making no change in the regulation. However, the change to monthly reporting reduces the number of reports a handler must submit annually and the Committee believes it benefits handlers without negatively affecting program compliance. Therefore, this alternative was rejected and the Committee unanimously agreed to return to monthly reporting and assessment collection requirements.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and

assigned OMB No. 0581-0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the January 19, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on June 15, 2006. Copies of the rule were mailed by the Committee's staff to all Committee members and Vidalia onion handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 14, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 34507, June 15, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ Accordingly, the interim final rule amending 7 CFR part 955 which was published at 71 FR 34507 on June 15, 2006, is adopted as a final rule without change.

Dated: September 27, 2006.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. E6-16257 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS-2006-0145]

Tuberculosis in Cattle and Bison; State and Zone Designations; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of Texas from modified accredited advanced to accredited-free. We have determined that Texas meets the criteria for designation as an accredited-free State.

DATES: This interim rule is effective September 29, 2006. We will consider all comments that we receive on or before December 4, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0145 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0145, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0145.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the

USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Orloski, Epidemiologist, National Tuberculosis Eradication Program, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Building B, M/S 3E20, Fort Collins, CO 80526-8117, (970) 494-7221.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone,

accreditation preparatory State or zone, or nonaccredited State or zone.

Request for Accredited-free Status in Texas

The entire State of Texas has been classified as modified accredited advanced for cattle and bison since June 3, 2002. Prior to that date, all of the State, except for a portion of El Paso and Hudspeth Counties, had been classified as an accredited-free zone; the zone in El Paso and Hudspeth Counties had been classified as modified accredited advanced. However, we have received from the State of Texas a request to be recognized as an accredited-free State for cattle and bison.

With regard to cattle and bison, State animal health officials in Texas have demonstrated to APHIS that Texas meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations. In accordance with these conditions, Texas has demonstrated that the zone within the State that had been previously classified as accredited-free has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison herds in the 2 years since the depopulation of the last affected herd in the zone. Similarly, with respect to the zone in El Paso and Hudspeth Counties that was not previously accredited-free, Texas has demonstrated that the zone has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison herds for the previous 5 years. Additionally, the State complies with the conditions of the UMR.

Therefore, we are amending the regulations to remove Texas from the list of modified accredited advanced States in § 77.9(a) and adding it to the list of accredited-free States in § 77.7(a).

Nonsubstantive Correction

In § 77.9(b), the words "The following are modified accredited advanced zones:" appear as the introductory text of the paragraph and are repeated at the beginning of paragraph (b)(1). We are amending paragraph (b)(1) in this rule to eliminate that duplication.

Immediate Action

Immediate action is warranted to accurately reflect the current tuberculosis status of Texas as an accredited-free State. This action will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy

cattle and bison from accredited-free States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of Texas from modified accredited advanced to accredited-free. We have determined that Texas meets the criteria for designation as an accredited-free State.

Cattle or bison that originate in an accredited-free State or zone may be moved interstate without restriction, whereas sexually intact cattle and bison not from an accredited herd are required to have one negative test within 60 days prior to being moved interstate from a modified accredited advanced State or zone. Thus, raising Texas's designation to accredited-free will eliminate the costs of that testing for herd owners in the State. Tuberculosis testing, which includes veterinary fees and handling expenses, costs approximately \$10 to \$15 per test. The average per-head value of cattle in Texas was \$840 in 2005, so the cost of testing represented between 1.2 and 1.8 percent of that average value. These cost savings, while beneficial, will not represent a significant monetary savings. Of course, the more a particular herd owner is involved in interstate movement, the greater the cost savings will be.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. In 2002, there were 13.979 million cattle and calves in Texas and approximately 122,194 farms with sales of cattle and calves. Over 99 percent of herd owners would be considered small businesses. Changing the status of Texas may enhance the marketability of cattle and bison from the State, since some prospective cattle

and bison buyers prefer to buy cattle and bison from accredited-free States. This may also result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

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

§ 77.7 [Amended]

■ 2. In § 77.7, paragraph (a) is amended by adding the word "Texas," immediately after the word "Tennessee,".

§ 77.9 [Amended]

■ 3. Section 77.9 is amended as follows:

■ a. In paragraph (a), by removing the words "and Texas".

■ b. In paragraph (b)(1), by removing the words "The following are modified accredited advanced zones:".

Done in Washington, DC, this 28th day of September 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-16299 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NE-12-AD; Amendment 39-14609; AD 2006-11-05]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2006-11-05 applicable to Rolls-Royce plc (RR) RB211-22B series, RB211-524B, -524C2, -524D4, -524G2, -524G3, and -524H series, and RB211-535C and -535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. That AD published in the **Federal Register** on May 23, 2006 (71 FR 29586). The “-524B-02, B-B-02, B3-02, and B4 series, Pre SB No. 72-7730” in the Regulatory section is incorrect. This document corrects that requirement. In all other respects, the original document remains the same.

DATES: *Effective Date:* October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7178; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A final rule AD FR Doc. 06-4713 applicable to RR RB211-22B series, RB211-524B, -524C2, -524D4, -524G2, -524G3, and -524H series, and RB211-535C and -535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed, was published in the **Federal Register** on May 23, 2006 (71 FR 29586). The following correction is needed:

§ 39.13 [Corrected]

On page 29587, in the first column of Table 1, in the second row, in the third line, “-524B-02, B-B-02, B3-02, and B4 series, Pre SB No. 72-7730” is corrected to read “-524B-02, B-B-02, B3-02, and B4 series, Pre and Post accomplishment of SB No. 72-7730”.

Issued in Burlington, Massachusetts, on September 26, 2006.

Peter A. White,

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

[FR Doc. E6-16235 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30516; Amdt. No. 3187]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective October 3, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2006.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

*For Purchase—*Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (mail address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR Part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P-NOTAMs.

The SIAPs, as modified by FDC P-NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air

commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on September 22, 2006.

James J. Ballough,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
09/13/06	FM	WENO ISLAND	CHUUK INTL	6/0004	RNAV (GPS) RWY 4, ORIG
09/13/06	MP	SAIPAN ISLAND	FRANCISCO C. ADA/SAIPAN INTL	6/0005	GPS RWY 25, AMDT 1
09/13/06	MP	SAIPAN ISLAND	FRANCISCO C. ADA/SAIPAN INTL	6/0009	GPS RWY 7, ORIG
09/13/06	MQ	SAND ISLAND	HENDERSON FIELD/MIDWAY ATOLL	6/0011	RNAV (GPS) RWY 24, ORIG
09/13/06	MQ	SAND ISLAND	HENDERSON FIELD/MIDWAY ATOLL	6/0012	RNAV (GPS) RWY 6, ORIG
09/13/06	CQ	ROTA ISLAND	ROTA INTL	6/0013	GPS RWY 27, ORIG-A
09/13/06	CQ	ROTA ISLAND	ROTA INTL	6/0014	GPS RWY 9, ORIG-A
09/13/06	CQ	ROTA ISLAND	ROTA INTL	6/0015	NDB RWY 27, AMDT 3A
09/15/06	FL	FORT MYERS	SOUTHWEST FLORIDA INTL	6/0222	RNAV (GPS) RWY 24, AMDT 1
09/15/06	FL	FORT MYERS	SOUTHWEST FLORIDA INTL	6/0224	RNAV (GPS) RWY 6, AMDT 1
09/18/06	IA	WATERLOO	WATERLOO REGIONAL	6/0498	ILS OR LOC RWY 12, AMDT 8C
09/07/06	NY	PLATTSBURGH	PLATTSBURGH INTL	6/9204	ILS RWY 17, AMDT 1B
09/07/06	ME	AUGUSTA	AUGUSTA STATE	6/9252	ILS OR LOC RWY 17, AMDT 2D
09/07/06	FL	DAYTONA BEACH	DAYTONA BEACH INTL	6/9253	RNAV (GPS) Y RWY 7L, ORIG
09/07/06	FL	WEST PALM BEACH	PALM BEACH INTL	6/9313	RNAV (GPS) RWY 13, AMDT 1
09/07/06	FL	GAINESVILLE	GAINESVILLE REGIONAL	6/9316	ILS OR LOC RWY 29, AMDT 12B
09/07/06	FL	GAINESVILLE	GAINESVILLE REGIONAL	6/9319	VOR RWY 29, ORIG-C
09/07/06	FL	GAINESVILLE	GAINESVILLE REGIONAL	6/9321	VOR/DME RWY 11, ORIG-B
09/07/06	FL	GAINESVILLE	GAINESVILLE REGIONAL	6/9323	RNAV (GPS) RWY 11, AMDT 1
09/07/06	NC	CHARLOTTE	CHARLOTTE/DOUGLAS INTL	6/9356	ILS OR LOC RWY 36L, ILS RWY 36L(CAT II), ILS RWY 36L(CAT III), AMDT 15A
09/08/06	VA	CULPEPER	CULPEPER REGIONAL	6/9410	VOR OR GPS-A, AMDT 4A
09/08/06	WY	CHEYENNE	CHEYENNE REGIONAL/JERRY OLSON FIELD.	6/9491	RADAR-1, AMDT 1
09/08/06	CA	LONG BEACH	LONG BEACH/DAUGHERTY FIELD	6/9591	RNAV (GPS) RWY 30, AMDT 1A
09/11/06	ID	BURLEY	BURLEY MUNI	6/9607	VOR A, AMDT 4
09/11/06	WY	KEMMERER	KEMMERER MUNI	6/9640	RNAV (GPS) RWY 34, ORIG
09/11/06	OR	PRINEVILLE	PRINEVILLE MUNI	6/9641	RNAV (GPS) RWY 28, ORIG
09/11/06	OR	PORTLAND	PORTLAND INTL	6/9642	RNAV (GPS) RWY 10R, ORIG

FDC Date	State	City	Airport	FDC No.	Subject
09/11/06	ID	BURLEY	BURLEY MUNI	6/9646	VOR/DME B, AMDT 4
09/11/06	OR	BURNS	BURNS MUNI	6/9661	VOR RWY 30, AMDT 3
09/11/06	WA	SEATTLE	BOEING FIELD/KING COUNTY INTL	6/9662	ILS RWY 13R, AMDT 28B
09/11/06	WA	SEATTLE	BOEING FIELD/KING COUNTY INTL	6/9663	RNAV (GPS) RWY 13R, ORIG
09/12/06	FL	FORT LAUDERDALE	FORT LAUDERDALE EXECUTIVE	6/9665	ILS RWY 8, AMDT 4C
09/11/06	NY	PENN YAN	PENN YAN	6/9724	NDB RWY 19, AMDT 6A
09/11/06	NY	PENN YAN	PENN YAN	6/9726	RNAV (GPS) RWY 19, ORIG
09/12/06	ME	AUBURN-LEWISTON	AUBURN-LEWISTON MUNI	6/9736	ILS OR LOC RWY 4, AMDT 10
09/12/06	ME	WATERVILLE	WATERVILLE ROBERT LAFLEUR	6/9740	ILS RWY 5, AMDT 2
09/12/06	DE	WILMINGTON	NEW CASTLE	6/9741	VOR RWY 9, AMDT 6A
09/12/06	DE	WILMINGTON	NEW CASTLE	6/9742	MLS RWY 9, ORIG-A
09/12/06	DE	WILMINGTON	NEW CASTLE	6/9743	VOR OR GPS RWY 19, AMDT 4A
09/12/06	GA	AMERICUS	SOUTHER FIELD	6/9750	ILS OR LOC/NDB RWY 23, ORIG
09/12/06	GA	AMERICUS	SOUTHER FIELD	6/9752	RNAV (GPS) RWY 5, ORIG
09/12/06	GA	AMERICUS	SOUTHER FIELD	6/9755	RNAV (GPS) RWY 23, ORIG
09/12/06	NY	PENN YAN	PENN YAN	6/9844	NDB RWY 28, AMDT 6A
09/12/06	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	6/9847	ILS RWY 4R, AMDT 15
09/12/06	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	6/9848	ILS RWY 4R (CAT III), AMDT 15
09/12/06	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	6/9849	ILS RWY 4R (CAT II), AMDT 15

[FR Doc. E6-16092 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30515 Amdt. No. 3187]

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 October 3, 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 October 3, 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 September 22, 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 26 October 2006

Fort Myers, FL, Southwest Florida Intl, RADAR–2, Orig
Fort Myers, FL, Southwest Florida Intl, Takeoff Minimums and Textual DP, Orig
State College, PA, University Park, RNAV (GPS) RWY 6, Orig–A

Effective 23 November 2006

Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 5, Orig
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 23, Orig
Mekoryuk, AK, Mekoryuk, NDB–B, Orig
Mekoryuk, AK, Mekoryuk, NDB/DME–A, Amdt 4
Mekoryuk, AK, Mekoryuk, GPS RWY 23, Orig, CANCELLED
Mekoryuk, AK, Mekoryuk, NDB RWY 23, Amdt 2, CANCELLED
Mekoryuk, AK, Mekoryuk, Takeoff Minimums and Textual DP, Amdt. 1
Mekoryuk, AK, Mekoryuk, DF RWY 23, Amdt 1
Butler, AL, Butler–Choctaw County, RNAV (GPS) RWY 11, Orig
Butler, AL, Butler–Choctaw County, RNAV (GPS) RWY 29, Orig
Butler, AL, Butler–Choctaw County, NDB OR GPS RWY 11, Amdt 2B, CANCELLED
Butler, AL, Butler–Choctaw County, Takeoff Minimums and Textual DP, Orig

Butler, GA, Butler Muni, RNAV (GPS) RWY 18, Orig
Butler, GA, Butler Muni, RNAV (GPS) RWY 36, Orig
Butler, GA, Butler Muni, Takeoff Minimums and Textual DP, Orig
Davenport, IA, Davenport Muni, RNAV (GPS) RWY 15, Amdt 1
Topeka, KS, Philip Billard Muni, RNAV (GPS) RWY 18, Amdt 1
Topeka, KS, Philip Billard Muni, RNAV (GPS) RWY 22, Amdt 1
Oakdale, LA, Allen Parish, RNAV (GPS) RWY 36, Amdt 1
Oakdale, LA, Allen Parish, NDB RWY 36, Amdt 1
Oakdale, LA, Allen Parish, Takeoff Minimums and Textual DP, Orig
KalisPELL, MT, Glacier Park Intl, ILS OR LOC RWY 2, Amdt 5
Austin, TX, Austin–Bergstrom Intl, Takeoff Minimums and Textual DP, Amdt 1
Big Lake, TX, Reagan County, RNAV (GPS) RWY 16, Orig
Big Lake, TX, Reagan County, GPS RWY 16, Orig, CANCELLED
Big Lake, TX, Reagan County, Takeoff Minimums and Textual DP, Amdt 1
Paris, TX, Cox Field, RNAV (GPS) RWY 17, Orig
Paris, TX, Cox Field, RNAV (GPS) RWY 35, Orig
Paris, TX, Cox Field, VOR RWY 35, Amdt 2
Paris, TX, Cox Field, Takeoff Minimums and Textual DP, Orig

The FAA published an Amendment in Docket No. 30513, Amdt No. 3184 to Part 97 if the Federal Aviation Regulations (Vol 71, FR No. 179, Page 54405; dated Friday, September 15, 2006) under section 97.33 effective 23 November 2006, which is hereby *rescinded*:

St. George, UT, St George Muni, RNAV (GPS) RWY 34, Amdt 1A
[FR Doc. E6–16093 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27504; File No. S7–06–06; File No. 4–512]

RIN 3235–AJ51

Mutual Fund Redemption Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is adopting amendments to a rule under the Investment Company Act. The rule, among other things, requires most open-end investment companies (“funds”) to enter into agreements with intermediaries, such as broker-dealers,

that hold shares on behalf of other investors in so called “omnibus accounts.” These agreements must provide funds access to information about transactions in these accounts to enable the funds to enforce restrictions on market timing and similar abusive transactions. The Commission is amending the rule to clarify the operation of the rule and reduce the number of intermediaries with which funds must negotiate shareholder information agreements. The amendments are designed to reduce the costs to funds (and fund shareholders) while still achieving the goals of the rulemaking.

DATES: *Effective Date:* December 4, 2006.

Compliance Dates: Section III of this Release contains more information on applicable compliance dates.

FOR FURTHER INFORMATION CONTACT: Thoreau Bartmann, Staff Attorney, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy (202) 551-6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5041.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 22c-2¹ under the Investment Company Act of 1940² (the “Investment Company Act” or the “Act”).³

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I. Background

On March 11, 2005, the Commission adopted rule 22c-2 under the Investment Company Act to help address abuses associated with short-term trading of fund shares.⁴ Rule 22c-

2 provides that if a fund redeems its shares within seven days,⁵ its board must consider whether to impose a fee of up to two percent of the value of shares redeemed shortly after their purchase (“redemption fee”).⁶ The rule also requires such a fund to enter into agreements with its intermediaries that provide fund management the ability to identify investors whose trading violates fund restrictions on short-term trading (“shareholder information agreements”).⁷

After hearing concerns about the operation of the information sharing provisions of the rule from fund management companies, in March of this year we proposed amendments that would reduce the costs of compliance and clarify the rule’s application in certain circumstances.⁸ The amendments are described in more detail below. We received 32 comment

⁵ Because the large majority of funds redeem shares within seven days of purchase, the practical effect of rule 22c-2, and these amendments, would be to require most funds to comply with the rule’s requirements. Therefore, throughout this Release we may describe funds as being “required to comply” with a provision of the rule, when the actual requirement only applies if a fund redeems its shares within seven days. A fund that does not redeem its shares within seven days would not be required to comply with those provisions of rule 22c-2.

⁶ Rule 22c-2(a)(1). Under the rule, the board of directors must either (i) approve a fee of up to 2% of the value of shares redeemed, or (ii) determine that the imposition of a fee is not necessary or appropriate. *Id.* A board, on behalf of the fund, may determine that the imposition of a redemption fee is unnecessary or inappropriate because, for example, the fund is not vulnerable to frequent trading or the nature of the fund makes it unlikely that the fund would be harmed by frequent trading. Indeed, a redemption fee is not the only method available to a fund to address frequent trading in its shares. As we have stated in previous releases, funds have adopted different methods to address frequent trading, including: (i) Restricting exchange privileges; (ii) limiting the number of trades within a specified period; (iii) delaying the payment of proceeds from redemptions for up to seven days (the maximum delay permitted under section 22(e) of the Act); (iv) satisfying redemption requests in-kind; and (v) identifying market timers and restricting their trading or barring them from the fund. *See Adopting Release, supra* note 4, at n.9; Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] at text preceding and following n.14.

⁷ Under the rule, the fund (or its principal underwriter) must enter into a written agreement with each of its financial intermediaries under which the intermediary agrees to (i) provide, at the fund’s request, identity and transaction information about shareholders who hold their shares through an account with the intermediary, and (ii) execute instructions from the fund to restrict or prohibit future purchases or exchanges. The fund must keep a copy of each written agreement for six years. Rule 22c-2(a)(2), (3).

⁸ *See Mutual Fund Redemption Fees, Investment Company Act Release No. 27255 (Feb. 28, 2006) [71 FR 11351 (Mar. 7, 2006)] (“2006 Proposing Release”).*

letters on the proposed amendments.⁹ Most commenters supported the proposal. Today we are adopting those amendments substantially as proposed, with some changes that reflect the comments we received.

II. Discussion

A. Shareholder Information Agreements

The amendments to rule 22c-2 we are adopting today (i) limit the types of intermediaries with which funds must enter into shareholder information agreements, (ii) address the rule’s application when there are chains of intermediaries, and (iii) clarify the effect of a fund’s failure to obtain an agreement with any of its intermediaries.

1. Small Intermediaries

Rule 22c-2 prohibits a fund from redeeming shares within seven days unless, among other things, the fund enters into written agreements with its financial intermediaries (such as broker-dealers or retirement plan administrators) that hold shares on behalf of other investors.¹⁰ Under those agreements, the intermediaries must agree to provide, at the fund’s request, shareholder identity (*i.e.*, taxpayer identification number or “TIN”¹¹) and transaction information,¹² and carry out

⁹ Comment letters on the 2006 Proposing Release are available in File No. S7-06-06, which is accessible at <http://www.sec.gov/rules/proposed/s70606.shtml>. Comment letters on the 2005 adoption are available in File No. S7-11-04, which is accessible at <http://www.sec.gov/rules/proposed/s71104.shtml>. References to comment letters are to letters in those files.

¹⁰ Rule 22c-2(a)(2). The rule excepts a fund from the requirement to enter into written agreements if, among other things, the fund “affirmatively permits short-term trading of its securities.” See rule 22c-2(b)(3). “Financial intermediary” is defined in rule 22c-2(c)(1).

¹¹ Some commenters noted that in the case of foreign shareholders, TINs may not always be available, and suggested that the rule permit alternate identifiers in those circumstances. *See Comment Letter of the Investment Company Institute (“ICI”) (Apr. 10, 2006).* In order to accommodate the use of alternative identifiers in those circumstances, we have revised the rule to allow for the use of Individual Taxpayer Identification Numbers (“ITINs”) or other government issued identifiers to identify foreign shareholders if a TIN is unavailable. *See* rule 22c-2(c)(5)(i).

¹² One comment letter submitted after the adoption of rule 22c-2 expressed concern that the rule’s contract provision, requiring that agreements with intermediaries mandate the disclosure of shareholder information at the fund’s request, conflicts with Commission rules governing proxy solicitations. *See Comment Letter of the American Bankers Assoc. (June 6, 2005).* The Commission’s proxy solicitation rules are set forth in Regulation 14A under the Securities Exchange Act of 1934, 17 CFR 240.14a-1 to 14b-2. The proxy rules govern the disclosure of information in the context of proxy solicitations, and do not prohibit banks, broker-dealers and other intermediaries from

¹ 17 CFR 270.22c-2.

² 15 U.S.C. 80a.

³ Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to “rule 22c-2,” “the rule,” or any paragraph of the rule will be to 17 CFR 270.22c-2.

⁴ *See Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (Mar. 11, 2005) [70 FR 13328 (Mar. 18, 2005)] (“Adopting Release”).*

instructions from the fund to restrict or prohibit further purchases or exchanges by a shareholder (as identified by the fund) who has engaged in trading that violates the fund's frequent trading (*e.g.*, market timing) policies.¹³ We designed this provision to enable funds to obtain the information that they need to monitor short-term trading in omnibus accounts and enforce their market timing policies.

After we adopted the rule in 2005, many fund managers expressed concern that the rule would require them to review a large number of their shareholder accounts in order to determine which shareholders are "financial intermediaries" as defined under the rule.¹⁴ They noted that, because the definition encompassed any entity that holds securities in nominee name for other investors, it would include, for example, a small business retirement plan that holds mutual fund shares on behalf of only a few employees and that may not identify itself as a financial intermediary to the fund. These commenters emphasized that the task of identifying these intermediaries, as well as negotiating agreements with them, would be costly and burdensome.

To address these concerns, earlier this year we proposed to narrow the scope of the rule by excluding from the definition of "financial intermediary" those intermediaries that the fund treats as individual investors for purpose of the fund's frequent trading policies. Our proposal was premised on the understanding that when a fund places restrictions on transactions at the intermediary level (*i.e.*, when the fund treats the intermediary itself as an individual investor), the fund is unlikely to need data about frequent trading by individual shareholders who hold shares through that intermediary, because abusive short-term trading by the individual shareholders holding through the omnibus account would ordinarily trigger application of those policies to the intermediary's trades.¹⁵

complying with agreements entered under rule 22c-2. See 2006 Proposing Release, *supra* note 8, at n.17.

¹³ See rule 22c-2(c)(5) (defining "shareholder information agreement," which is discussed further in Section II.B below).

¹⁴ See, *e.g.*, Comment Letter of OppenheimerFunds, Inc. (May 9, 2005).

¹⁵ A fund typically exempts from its frequent trading policies the transactions of an intermediary that holds fund shares, on behalf of its customers, in an omnibus account with the fund. See, *e.g.*, Mandatory Redemption Fees For Redeemable Fund Securities, Investment Company Act Release No. 26375A, at text accompanying n. 39 (Mar. 5, 2004) [69 FR 11762 (Mar. 11, 2004)] ("2004 Proposing Release"). The fund exempts the intermediary because the daily changes in the intermediary's

Therefore, transparency regarding underlying shareholder transactions executed through these accounts seemed unnecessary to achieve the goals of the rule. We believed that this new approach would substantially eliminate the need for funds to devote resources to identifying intermediaries, because the funds will have already identified the relevant intermediaries in the course of administering their policies on short-term trading. Commenters agreed with our analysis and urged that we adopt the amendments.¹⁶

Today we are amending the definition of "financial intermediary" in rule 22c-2 to exclude from that definition any entity that the fund treats as an "individual investor" for purposes of the fund's policies intended to eliminate or reduce dilution of the value of fund shares, *i.e.*, frequent trading and redemption fee policies.¹⁷ As a result, if a fund, for example, applies a redemption fee or exchange limits to transactions by a retirement *plan* (an intermediary) rather than to the purchases and redemptions of the *employees* in the plan, then the plan would not be considered a "financial intermediary" under the rule, and the fund would not be required to enter into an agreement with that plan.¹⁸

The Commission is making one change from our proposal in response to commenters who pointed out that, in

position, on behalf of its various customers' purchases and redemptions, result in a single purchase or redemption each day in the intermediary's omnibus account. If the intermediary were not exempt, its daily net trades would likely subject it to redemption fees or trading limitations. See The Coalition of Mutual Fund Investors, An Evaluation of the Redemption Fee and Market Timing Policies of the Largest Mutual Fund Groups (May 5, 2005) (*available at* <http://www.investorscoalition.com/CMFIMarketTimingStudy05.pdf>).

¹⁶ See, *e.g.*, Comment Letter of the Investment Company Institute (Apr. 10, 2006); Comment Letter of Charles Schwab & Co., Inc. (Apr. 10, 2006).

¹⁷ Rule 22c-2(c)(1)(iv). If a fund has not established frequent trading policies and thus has not determined which persons it does not treat as individual investors, this exclusion from the definition of "financial intermediary" would not apply, and the fund would need to identify those shareholder accounts that are "financial intermediaries." See 2006 Proposing Release, *supra* note 8, at n.23.

¹⁸ We have not, as recommended by some commenters, revised the rule to specify the circumstances under which a fund may treat an intermediary as an individual investor rather than an intermediary for purposes of its frequent trading policies. See, *e.g.*, Comment Letter of Charles Schwab & Co., Inc. (Apr. 10, 2006). We continue to believe that funds are in the best position to determine the treatment of an account as an individual investor under their frequent trading policies. Moreover, we believe a fund will have little incentive to "inappropriately" treat any intermediary as an individual shareholder, because the intermediary is free to terminate its relationship with the fund.

some cases, purchase and redemption orders are aggregated and submitted by agents of intermediaries on behalf of the intermediaries.¹⁹ These commenters stated that under the rule as proposed, it was unclear whether an order submitted by an agent of an intermediary would be covered by the rule. In order to clarify the rule in response to those comments, we have revised it to provide that funds must enter into agreements with "each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund * * *" (changes in italics).²⁰ This revision clarifies that funds must enter into agreements with financial intermediaries or their agents even if the intermediaries submit orders through entities that do not qualify as financial intermediaries.

2. Intermediary Chains

In some cases, an intermediary such as a broker-dealer may hold shares of a mutual fund not only on behalf of individual investors, but also on behalf of other financial intermediaries, such as pension plans or other broker-dealers ("indirect intermediaries") through one or more layers of intermediaries or "chains." After we adopted rule 22c-2 in 2005, fund managers expressed uncertainty as to how the rule applied to these arrangements, and expressed concern how, as a practical matter, a fund could obtain shareholder information through multiple layers of intermediaries.²¹ In response to these concerns, we proposed and are now adopting amendments to clarify the operation of the rule as it applies to "chains of intermediaries."

The revised rule requires that a fund (or, on the fund's behalf, its principal underwriter or transfer agent²²) enter

¹⁹ See, *e.g.*, Comment Letter of Matrix Settlement & Clearing Services, L.L.C. (Apr. 10, 2006).

²⁰ Rule 22c-2(a)(2). We are also revising paragraph (a)(2)(i) of the rule to require that the fund enter into an agreement with each such "intermediary (or its agent)." Rule 22c-2(a)(2)(i).

²¹ See, *e.g.*, Comment Letter of T. Rowe Price Associates, Inc. (May 24, 2005).

²² When rule 22c-2 was adopted in 2005, it required a fund, or a principal underwriter acting on behalf of the fund, to enter into shareholder information agreements with intermediaries. In addition to the amendments described above, as proposed, we are also revising the rule to include a fund's *transfer agent* as an entity that may enter into a shareholder information agreement on the fund's behalf. As we noted when we proposed this change, the fund's transfer agent often has preexisting agreements with a fund's financial intermediaries, and thus permitting transfer agents to enter into information agreements may avoid potentially duplicative agreements or inefficiencies in the process. See 2006 Proposing Release, *supra* note 8, at text accompanying n.38. If a transfer agent

into a shareholder information agreement²³ only with those financial intermediaries²⁴ that submit purchase or redemption orders directly to the fund, its principal underwriter or transfer agent, or a registered clearing agency (“first-tier intermediaries”).²⁵ The rule does not require first-tier intermediaries to enter into shareholder information agreements with any indirect intermediaries.

Under the proposed rule amendments, a shareholder information agreement would obligate a first-tier intermediary to, upon request of the fund, use its best efforts to identify any accountholders who are themselves intermediaries, and obtain and forward (or have forwarded) the underlying shareholder identity and transaction information from those indirect intermediaries farther down the chain.²⁶ Some commenters expressed concern that shareholder information agreements might require first-tier intermediaries (and indirect intermediaries) to canvass all of their shareholder accounts to determine which accountholders are themselves intermediaries if a fund made a blanket request to identify all indirect intermediaries.²⁷

enters into an agreement on behalf of the fund, the agreement must require the financial intermediary to provide the requested information to the fund upon the fund’s request. See *id.* at n.37.

We are not adopting the proposed revision that would have permitted a registered clearing agency to enter into shareholder information agreements on behalf of a fund. We received comment from the only registered clearing agency that receives orders for transactions in fund shares, noting that it does not have the capability to serve in this function (because it does not act as an agent for funds) and requesting that we revise the final rule to reflect this fact. See Comment Letter of the National Securities Clearing Corporation (Apr. 10, 2006). We agree with the commenter’s concern that including this reference to clearing agencies might cause confusion.

²³ Rule 22c-2(c)(5). The agreement, which must be in writing, may be part of another contract or agreement, such as a distribution agreement.

²⁴ We understand that retirement plan administrators and other persons that maintain the plan’s participant records typically submit fund shares transactions to the fund or its transfer agent, principal underwriter, or a registered clearing agency. The rule as we adopted it last year specifically includes these administrators and recordkeepers within the definition of a “financial intermediary.” See rule 22c-2(c)(1)(iii).

²⁵ Rule 22c-2(a)(2). We also considered, as an alternative to this requirement, that shareholder information agreements not require the collection of any shareholder information from indirect intermediaries. We did not take that approach because we are concerned that providing such an exception might encourage abusive short-term traders to conduct their activities through an indirect intermediary in order to avoid detection by the fund.

²⁶ See proposed rule 22c-2(c)(5)(iii) (discussed in 2006 Proposing Release, *supra* note 8, at Section II.B).

²⁷ See Comment Letter of the Securities Industry Assoc. (Apr. 10, 2006); Comment Letter of Charles Schwab & Co., Inc. (Apr. 10, 2006).

In light of these concerns, we have revised the rule text to clarify that a fund, after receiving initial transaction information from a first-tier intermediary, must make a *specific* further request to the first-tier intermediary for information on certain shareholders.²⁸ As adopted, the amended rule defines “shareholder information agreement” as an agreement under which a financial intermediary agrees to “[u]se best efforts to determine, promptly upon request of the fund, whether any *specific person about whom it has received the identification and transaction information * * * [required by the rule], is itself a financial intermediary * * **” (changes in italics).²⁹ Under the revised rule, a shareholder information agreement need not obligate a first-tier intermediary to perform a complete review of its books and records to identify all indirect intermediaries. Instead, pursuant to a shareholder information agreement, a first-tier intermediary must use its best efforts to identify whether or not certain specific accounts identified by the fund are indirect intermediaries.³⁰ If an indirect intermediary that holds an account with a first-tier intermediary does not provide underlying shareholder information, the agreement must obligate the first-tier intermediary to prohibit, upon the fund’s request, that indirect intermediary from purchasing additional shares of the fund through the first-tier intermediary.³¹

²⁸ See rule 22c-2(c)(5)(iii). For example, after receiving identity and transaction information from a first-tier intermediary, the fund could then request information from the first-tier intermediary concerning those frequent trading shareholders whose transactions were particularly active, in order to determine whether those shareholders are themselves intermediaries. Under the shareholder information agreement, the first-tier intermediary would then be required to use its best efforts to determine, on behalf of the fund, whether any of those shareholders are intermediaries (*i.e.*, second-tier intermediaries). After the first-tier intermediary informs the fund which of the shareholders are second-tier intermediaries, the fund could then request that the first-tier intermediary obtain underlying shareholder transaction information from any or all of those second-tier intermediaries.

²⁹ See rule 22c-2(c)(5)(iii).

³⁰ Rule 22c-2(a)(2). A first-tier intermediary also may choose to indicate to the fund, when the intermediary initially discloses transaction information requested by the fund, which shareholders it knows to be indirect intermediaries. This practice may reduce a fund’s need to request further information about indirect intermediaries.

³¹ Rule 22c-2(c)(5)(iii)(B). Under the rule, therefore, if, upon specific request of the fund, an indirect intermediary (such as a third-tier intermediary) does not provide information whether one or more of its shareholders is an intermediary, then upon further request by the fund, the first-tier intermediary would be required to restrict or prohibit that indirect intermediary from purchasing additional shares of the fund on behalf of other investors.

3. Effect of Lacking an Agreement

After we adopted the rule, some commenters expressed concern that the rule, which made it unlawful for a fund to redeem a security within seven days without entering into a shareholder information agreement, could be interpreted to prevent a fund from redeeming any of its shares if it failed to enter into an agreement with any intermediary. Therefore we proposed, and are today adopting, an amendment to the rule that clarifies and further limits the consequences of failing to enter into an information agreement.

Under rule 22c-2, as amended, if a fund does not have an agreement with a particular intermediary, the fund thereafter must prohibit that intermediary from purchasing securities issued by the fund.³² The prohibition applies only to the intermediary with which the fund does not have an agreement; purchases from other intermediaries will not be affected.³³ One commenter argued that the rule

³² Rule 22c-2(a)(2)(ii). One commenter suggested that we clarify that in these circumstances a “purchase” would not include the automatic reinvestment of dividends. See Comment Letter of the Investment Company Institute (Apr. 10, 2006). We agree that the reinvestment of dividends does not present the types of frequent trading risks that the rule is designed to help funds prevent. We therefore have revised the rule text to clarify that, for purposes of this provision, a “purchase” does not include the automatic reinvestment of dividends. See rule 22c-2(a)(2)(ii).

³³ A number of commenters expressed concerns about possible conflicts with the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 (“ERISA”), and Department of Labor rules under ERISA, in complying with rule 22c-2. They stated that those laws: (i) Require certain “blackout” disclosures before a plan sponsor may carry out a fund’s request to prohibit future purchases; and (ii) provide a safe harbor under section 404(c) of ERISA from liability as a fiduciary only if the plan provides participants an adequate number of investment alternatives and the ability to trade among them with appropriate frequency, in light of the market volatility of those alternatives. See, *e.g.*, Comment Letter of the American Bankers Assoc. (Apr. 14, 2006) (citing ERISA section 101(i), ERISA section 404(c), 29 CFR 2520, and 29 CFR 2550.404c-1); Comment Letter of the American Benefits Council (Apr. 10, 2006). Our staff has conferred with representatives of the Department of Labor, who have advised us that these concerns have been addressed in guidance on the duties of employee benefit plan fiduciaries in light of alleged abuses involving mutual funds. See Statement of Ann L. Combs, Assistant Secretary, Department of Labor, *Fiduciary Responsibilities Related to Mutual Funds*, (Feb. 17, 2004) (available at <http://www.dol.gov/ebsa/newsroom/sp021704.html>) (reasonable redemption fees and reasonable plan or investment fund limits on the number of times a participant can move in and out of a particular investment within a particular period “represent approaches to limiting market timing that do not, in and of themselves, run afoul of the ‘volatility’ and other requirements set forth in the Department’s regulation under section 404(c), provided that any such restrictions are allowed under the terms of the plan and clearly disclosed to the plan’s participants and beneficiaries.”).

should not prohibit purchases that are fully disclosed to the fund.³⁴ We agree that the fund does not need further information under an agreement to scrutinize those purchases. Therefore, we have revised the final rule to provide that, if there is no shareholder information agreement with a particular intermediary, the fund must prohibit the intermediary from purchasing the fund's securities only "in nominee name on behalf of other persons."³⁵ We have also, for the same reason, revised this provision so that it does not apply to the intermediary's purchases of fund securities on behalf of the intermediary itself.³⁶

Some commenters suggested alternative approaches that we have decided not to adopt. One recommended that the rule preclude intermediaries that lack an agreement with funds from redeeming shares within seven days of purchase, rather than prohibiting further purchases of fund shares.³⁷ This approach is not acceptable to us because it would deny investors access to their funds for seven days after purchasing shares through such an intermediary, thereby penalizing investors for the inability or unwillingness of a fund and intermediary to enter into a shareholder information agreement. Another commenter argued that the rule should instead preclude a fund from making further payments under selling or dealer agreements to intermediaries that lack shareholder information agreements.³⁸

³⁴ See Comment Letter of the American Bankers Assoc. at 6 (Apr. 14, 2006).

³⁵ A similar revision has been made to the same type of provision concerning chains of intermediaries. See rule 22c-2(c)(5)(iii)(B).

³⁶ Rule 22c-2(a)(2)(ii), (c)(5)(iii)(B). One commenter requested that the Commission provide further guidance to financial intermediaries that attempt to carry out instructions from a fund, under rule 22c-2(c)(5)(ii), to "restrict or prohibit further purchases or exchanges" by a particular investor whom the fund has identified as violating its frequent trading policies. See Comment Letter of the Committee of Annuity Insurers (submitted by Sutherland Asbill & Brennan LLP) (Apr. 10, 2006). The commenter noted that an "exchange" (or transfer) request is actually two simultaneous orders: an order to redeem shares of one fund and an order to purchase, with the proceeds of the redemption, shares of another fund. This commenter questioned whether the rule was meant to include both the redemption and purchase order. As noted, the rule permits a fund to restrict or prohibit "exchanges." We agree with the commenter that an "exchange" request includes both a redemption order and purchase order, and if a fund instructs an intermediary to restrict an "exchange" (or a purchase), the intermediary may notify the investor that it will not effect the redemption portion of a request to exchange into the fund, as well as the purchase portion of the request.

³⁷ See Comment Letter of the American Benefits Council (Apr. 10, 2006).

³⁸ See Comment Letter of Federated Investors, Inc. (submitted by ReedSmith LLP) (Apr. 6, 2006).

However, all funds do not necessarily have selling or dealer agreements with all of their "financial intermediaries" as defined in the rule, and restricting the rule's scope to those intermediaries that have such agreements would likely seriously restrict a fund's ability to gather information and enforce its policies. After careful consideration of the suggested alternatives, we believe that barring future purchases by intermediaries best serves the purposes of the rule.

B. Operation of the Rule

When we adopted rule 22c-2, we explained that the shareholder information agreement requirement is designed to give fund managers (and their chief compliance officers) a compliance tool to monitor trading activity in order to detect frequent trading and to assure consistent enforcement of fund policies.³⁹ But we also explained that the rule gives managers flexibility to request information periodically such as when circumstances suggested that abusive trading activity is occurring.⁴⁰

We recognize that in some cases, frequent use of this tool might be costly for funds and intermediaries. Commenters expressed concerns about these costs, and several commenters urged us to impose limits on the frequency of information requests made by funds pursuant to the information agreements.⁴¹ We are not imposing limits because, as we noted in the Adopting Release, we expect funds that are susceptible to market timing to use the tool regularly.⁴² Not all funds, however, are susceptible to market timing.

A fund, in determining the frequency with which it should seek transaction information from its intermediaries, could consider: (i) Unusual trading patterns, such as abnormally large inflows or outflows, that may indicate the existence of frequent trading abuses; (ii) the risks that frequent trading poses to the fund and its shareholders in light of the nature of the fund and its portfolio; (iii) the risks to the fund and its shareholders of frequent trading in light of the amount of assets held by, or the volume of sales and redemptions through, the financial intermediary; and (iv) the confidence the fund (and its

³⁹ Adopting Release, *supra* note 4, at text accompanying n.49.

⁴⁰ *Id.* at text following n.42.

⁴¹ See, e.g., Comment Letter of Massachusetts Mutual Life Insurance Company (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

⁴² Adopting Release, *supra* note 4, at text accompanying n.50.

chief compliance officer⁴³) has in the implementation by an intermediary of trading restrictions designed to enforce fund frequent trading policies or similar restrictions designed to protect the fund from abusive trading practices. In some cases, fund managers may seek transaction information only occasionally to determine whether the intermediary is, in fact, enforcing trading restrictions or imposing redemption fees on behalf of the fund.⁴⁴

⁴³ See, e.g., Compliance Programs of Investment Companies and Investment Advisors, Investment Company Act Release No. 26299, at n.69 and accompanying text (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] ("[U]nder rule 38a-1, a fund must have procedures reasonably designed to ensure compliance with its disclosed policies regarding market timing. These procedures should provide for monitoring of shareholder trades or flows of money in and out of the funds in order to detect market timing activity, and for consistent enforcement of the fund's policies regarding market timing.")

⁴⁴ Some commenters expressed concern about the ability of financial intermediaries to provide information to funds, in light of applicable privacy laws. See, e.g., Comment Letter of the American General Life Insurance Company, *et al* (submitted by O'Melveny & Myers LLP), (May 9, 2005); 15 U.S.C. 6801-09, 6821-27 (privacy provisions of Gramm-Leach-Bliley Act); Regulation S-P, 17 CFR Part 248 (Commission rules implementing privacy provisions for funds, broker-dealers, and registered investment advisers). Under those laws, financial institutions such as funds, broker-dealers, and banks must provide a notice describing the institution's privacy policies and an opportunity for consumers to opt out of the sharing of information with nonaffiliated third parties. These privacy laws also contain important exceptions to the notice and opt-out requirements. Under the Commission's privacy rules, for example, these requirements do not apply to the disclosure of information that is "necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes," which includes a disclosure that is "[r]equired, or is a usual, appropriate, or acceptable method * * * [t]o carry out the transaction or the product or service business of which the transaction is a part * * *" 17 CFR 248.14(a), (b)(2). See also 17 CFR 248.15(a)(7)(i) (notice and opt-out requirements not applicable to disclosure of information to comply with law). Financial privacy rules that are substantially identical to these rules apply to financial intermediaries other than broker-dealers, and contain comparable exceptions. See, e.g., 12 CFR Part 40 (rules applicable to national banks, adopted by the Comptroller of the Currency). We believe that the disclosure of information under shareholder information agreements, and the fund's request and receipt of information under those agreements, are covered by these exceptions. We also note that financial institutions often state in their privacy policy notices that the institution makes "disclosures to other nonaffiliated third parties as permitted by law." See 17 CFR 248.6(b). Therefore we believe it will not be necessary for intermediaries such as broker-dealers and banks to provide new privacy notices or opt-out opportunities to their customers, in order to comply with rule 22c-2. Commenters on the 2006 Proposing Release generally agreed that complying with rule 22c-2 should not require broker-dealers and banks to provide new privacy notices to their customers. See Comment Letter of the Investment Company Institute (Apr. 10, 2006); Comment Letter of the American Bankers Assoc. (Apr. 14, 2006).

A fund that receives shareholder information for a purpose permitted by the privacy rules under the

Some intermediaries have responded to market timing concerns by enforcing their own frequent trading policies, which may be different from policies established by fund boards. We believe that a fund in appropriate circumstances could reasonably conclude that an intermediary's frequent trading policies sufficiently protect fund shareholders, and could therefore defer to the intermediary's policies, rather than seek to apply the fund's policies on frequent trading to shareholders who invest through that intermediary. In those circumstances, the fund should describe in its prospectus that certain intermediaries through which a shareholder may own fund shares may impose frequent trading restrictions that differ from those of the fund, generally describe the types of intermediaries (e.g., broker-dealers, insurance company separate accounts, and retirement plan administrators), and direct shareholders to any disclosures provided by the intermediaries with which they have an account to determine what restrictions apply to the shareholder. We note that a fund is required to disclose whether each restriction imposed by the fund to prevent or minimize frequent trading applies to trades that occur through omnibus accounts at intermediaries, and to describe with specificity the circumstances, if any, under which each such restriction will not be imposed.⁴⁵

C. Redemption Fees

Rule 22c-2 requires fund directors to consider whether to adopt a redemption fee, but the rule neither requires funds to adopt such a fee nor specifies the terms under which such a fee should be assessed.⁴⁶ A number of commenters raised concerns about redemption fees, and encouraged us to become involved in establishing the terms and conditions under which funds charge them.⁴⁷ A number of commenters, for example,

exceptions to consumer notice and opt out requirements may not disclose that information for other purposes, such as marketing, unless permitted under the intermediary's privacy policy. See Adopting Release, *supra* note 4, at n.47.

⁴⁵ See Item 6(e) of Form N-1A [17 CFR 239.15A and 274.11A]; Item 8(e) of Form N-3 [17 CFR 239.17a and 274.11b]; Item 7(e) of Form N-4 [17 CFR 239.17b and 274.11c]; Item 6(f) of Form N-6 [17 CFR 239.17c and 274.11d]. These disclosure items would not require a fund to describe the frequent trading policies of each intermediary to whose policies the fund defers.

⁴⁶ The rule does, however, require that any redemption fee charged not exceed two percent and apply to redemptions no less than seven days after purchase. See rule 22c-2(a)(1)(i).

⁴⁷ See, e.g., Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006); Comment Letter of the American Council of Life Insurers (Apr. 10, 2006); Comment Letter of the Committee of Annuity Insurers (submitted by Sutherland Asbill & Brennan) (Apr. 10, 2006).

urged us to require that fund redemption fee policies waive fees that might be imposed as a result of transactions not initiated by investors.⁴⁸

We appreciate the commenters' suggestions that standardizing the terms and conditions of redemption fee policies might reduce the costs that intermediaries and others (including funds themselves) will bear in implementing fund redemption fees. However, we have decided not to propose to standardize the terms or conditions to preserve the flexibility of each fund to fashion policies that are best suited to protect the investors in each fund. We have done this after receiving extensive comment on the matter and after observing a lack of consensus among industry participants on the appropriate terms of a uniform redemption fee.⁴⁹ Although we may reconsider our decision at a later time, until then, the terms of redemption fee policies are a matter for fund boards to determine.⁵⁰

III. Compliance Dates

When the Commission adopted rule 22c-2 in March 2005, we established a compliance date of October 16, 2006. In the 2006 Proposing Release, we requested comment on whether we should extend that compliance date. Nearly every commenter requested an extension, pointing out the need for significant time to revise agreements with intermediaries and change systems to accommodate the transmission and receipt of trading information. Commenters requested a variety of compliance date extensions, ranging from 6 months to 18 months.

⁴⁸ See, e.g., Comment Letter of the American Society of Pension Professionals & Actuaries (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006). Non-investor initiated transactions may include automatic asset rebalancing, automatic distributions, and prearranged periodic contributions.

⁴⁹ See 2006 Proposing Release, *supra* note 8, at text following n.12.

⁵⁰ Several commenters noted that a number of state insurance and contract law issues might arise in connection with a redemption fee charged to investors who invest in funds through insurance company separate accounts. See, e.g., Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006); Comment Letter of the American Council of Life Insurers (Apr. 10, 2006). As we stated in the 2006 Proposing Release, we believe that because redemption fees and frequent trading policies are imposed by the fund, and not the insurance company, enforcing those limits or fees with respect to these investors should not cause insurance companies to breach their contracts. See 2006 Proposing Release, *supra* note 8, at n.12. Moreover, nothing in this rule would preclude a fund that is concerned about the legality under existing contracts of imposing these limits or fees on certain insurance contractholders, from choosing not to impose them with regard to investors whose policies would not permit imposition of such limits or fees.

Today we are extending the compliance date for the shareholder information agreement provisions of rule 22c-2. We are extending by 6 months, until April 16, 2007, the date by which funds must enter into shareholder information agreements with their intermediaries.⁵¹ We also are extending by 12 months, until October 16, 2007, the date by which funds must be able to request and promptly receive shareholder identity and transaction information pursuant to shareholder information agreements. This latter extension is designed to allow additional time for funds, intermediaries, and others to revise their systems to accommodate the request, provision, and use of information from intermediaries after the negotiation of shareholder information agreements.

We did not propose, nor did we receive comment on, an extension of the compliance date for section 22c-2(a)(1), which requires a fund's board to consider the adoption of a redemption fee policy. The compliance date for that provision, October 16, 2006, remains in effect.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, the amendments we are adopting today will (i) limit the types of intermediaries with which funds must enter into shareholder information agreements, (ii) address the rule's application when there are chains of intermediaries, and (iii) clarify the effect of a fund's failure to obtain an agreement with any of its intermediaries. These amendments are designed to respond to concerns that commenters identified during the course of implementing rule 22c-2, and in response to our request for comment on these proposed amendments. We believe that the amendments will result in substantial cost savings to funds, financial intermediaries, and investors, and provide clarification of the rule's requirements.

A. Benefits

We anticipate that funds, financial intermediaries, and investors will benefit from these amendments to rule 22c-2. As discussed more fully in the Adopting Release we issued in 2005, rule 22c-2 is designed to allow a fund to deter, and to provide the fund and its shareholders reimbursement for the costs of, short-term trading in fund shares.⁵²

⁵¹ See rule 22c-2(a)(2).

⁵² See Adopting Release, *supra* note 4, at Section IV.A.

The amendments to rule 22c-2 that we are adopting today will likely result in additional benefits to funds, financial intermediaries, and investors. As discussed in the previous sections of this Release, some commenters on the Adopting Release argued that the rule's definition of "financial intermediary" was too broad because it would have required funds to identify and enter into agreements with a number of intermediaries that may not pose a significant short-term trading risk to funds, and may have imposed unnecessary costs to market participants.⁵³ For example, one large fund complex indicated that, under the rule as adopted, identifying their "financial intermediaries" could cost that fund complex \$8.5 million or more.⁵⁴ These amendments will modify the definition of financial intermediary to exclude entities that a fund treats as an individual investor for purposes of the fund's policies on market timing or frequent trading. We believe that these amendments will reduce the burden on funds of identifying those entities that might have qualified as financial intermediaries under the rule as adopted, because a fund should already know which entities it treats as intermediaries for purposes of its policies on market timing or frequent trading.⁵⁵ As further discussed in the Paperwork Reduction Act Section below, for purposes of the Paperwork Reduction Act we have estimated that identifying the intermediaries with

which a fund complex must enter into agreements may take the average fund complex a total of 250 hours of a service representative's time, at a cost of \$40 per hour,⁵⁶ for a total burden to all funds of 225,000 hours, at a total cost of \$9 million. These amendments will likely provide a significant benefit because they should reduce the costs associated with the intermediary identification process.

By enabling funds to forego the cost of entering into agreements with omnibus accountholders that they treat as individual investors, we anticipate that the large majority of small omnibus accountholders will now fall outside the shareholder information agreement provisions of the rule. This will likely result in significant cost and time savings to funds and financial intermediaries through reduction of the expenses associated with these agreements. The reduction of these costs also may benefit fund investors and fund advisers, to the extent that these costs may have been passed on to them. We estimate that this will significantly reduce the burden on many entities that would otherwise have qualified as intermediaries under the rule as adopted, because the excluded entities would no longer need to enter into shareholder information agreements, or develop and maintain systems to provide the relevant information to funds. Commenters on the 2006 Proposing Release generally agreed that the rule amendments are likely to reduce costs to market participants.⁵⁷

Commenters on the 2005 adoption were also concerned that the rule as adopted might have required funds to enter into agreements with intermediaries that hold fund shares in the name of other intermediaries (a "chain of intermediaries"), potentially resulting in a fund having to enter into agreements with intermediaries with which it may not have a direct relationship (*i.e.*, indirect intermediaries).⁵⁸ These amendments further clarify and define the operation of the rule with respect to intermediaries that invest through other intermediaries. These amendments to rule 22c-2 define the term "shareholder information agreement," and provide that funds need only enter into

shareholder information agreements with intermediaries that directly submit orders to the fund, its principal underwriter, transfer agent, or to a registered clearing agency. Accordingly, funds will not need to enter into agreements with indirect intermediaries and may incur lower systems development costs related to the collection of underlying shareholder information, thereby reducing the costs of compliance.

Under the amendments adopted today, a first-tier intermediary, in its agreement with the fund, must agree to, upon further request by the fund: (i) Provide the fund with the underlying shareholder identification and transaction information of any other intermediary that trades through the first-tier intermediary (*i.e.*, indirect intermediary); or (ii) prohibit the indirect intermediary from purchasing, on behalf of others, securities issued by the fund. This approach is designed to preserve the investor protection goals of the rule by ensuring that funds have the ability to identify short-term traders that may attempt to evade the reach of the rule by trading through chains of financial intermediaries.

By defining minimum standards for what must be included in these shareholder information agreements, we intended to balance the need for funds to acquire shareholder information from indirect intermediaries who trade in fund shares, with practical concerns regarding the difficulty that funds might face in identifying these intermediaries and entering into agreements with them. Because an intermediary that trades directly with a fund already has a relationship with its second-tier intermediaries (and is likely to have a closer relationship than the fund to any intermediary that is farther down the "chain"), a first-tier intermediary appears to be in the best position to arrange for the provision of information to a fund regarding the transactions of shareholders trading through its indirect intermediaries. By providing a definition of the term "shareholder information agreement," the amended rule clarifies the balance of duties and obligations between funds and financial intermediaries. Because first-tier intermediaries may already have access to the shareholder transaction and identification information of their indirect intermediaries, they will likely be able to provide this information to funds at a minimal cost, especially compared to the significant costs that funds would incur if they were required to collect the same information from indirect intermediaries themselves. Although first-tier intermediaries may

⁵³ See Comment Letter of the Investment Company Institute at 3 (May 9, 2005). The ICI stated in its 2005 comment letter that, under the rule as adopted in 2005, three large fund complexes alone would have to evaluate 6.5 million accounts that are "not in the name of a natural person and thus could be held as an intermediary for purposes of the rule" and might have to enter into agreements with a significant portion of those accounts that are held in nominee name. *Id.* The ICI noted that many of these accounts are likely associated with small retirement plans, small businesses, trusts, bank nominees and other entities that are unlike typical financial intermediaries such as broker-dealers. It added that funds typically do not have agreements with such small entities, other than agreements incidental to the opening of an account.

⁵⁴ See 2006 Proposing Release, *supra* note 8, at n.48.

⁵⁵ Under the revised rule, if the fund does not exempt an intermediary from its frequent trading policies, *i.e.* if the fund treats the intermediary as an individual investor for purposes of those policies, then the entity would not be a "financial intermediary" (with respect to that fund), and the fund would not have to enter into a shareholder information agreement with it. These intermediaries might include small retirement plans that do not identify themselves as intermediaries or omnibus accounts to the fund and request an exemption from the fund's frequent trading policies. These intermediaries will likely either have very few underlying investors, and/or restrict their transactions so that transactions by investors do not trigger application of a redemption fee or violate the fund's frequent trading policies.

⁵⁶ See *infra* note 95.

⁵⁷ See, *e.g.*, Comment Letter of the Investment Company Institute (Apr. 10, 2006) ("[The proposed approach] should reduce the costs and burdens associated with the rules implementation while still providing funds access to underlying shareholder information.")

⁵⁸ See Comment Letter of T. Rowe Price Associates, Inc. at 2 (May 24, 2005); Comment Letter of OppenheimerFunds, Inc. at 3 (May 9, 2005).

incur some costs in collecting and gathering this information from indirect intermediaries, there is a benefit in having the entity that has the easiest access to the relevant information have the responsibility for arranging for its delivery to funds.

In general, commenters on the 2006 Proposing Release agreed that first tier intermediaries are in a better position than funds to collect data from indirect intermediaries,⁵⁹ although one commenter disagreed and stated that intermediaries are not in a better position than funds to collect information from indirect intermediaries.⁶⁰ We continue to believe that the amended rule's approach of having the agreements require first-tier intermediaries to identify and collect information from indirect intermediaries appears to be the most cost effective method of handling the chain of intermediaries issue while still effectuating the purposes of the rule. Funds and intermediaries are also likely to engage in negotiations that will distribute the costs of information sharing between the entities, resulting in incentives for funds to narrowly target their information requests.

As discussed in the previous sections, these amendments clarify the result if a fund lacks an agreement with a particular intermediary. In such a situation, the fund may continue to redeem securities within seven calendar days, but it must prohibit that financial intermediary from purchasing fund shares in nominee name, on behalf of any other person. Some commenters had stated that the rule, as adopted in 2005, could be interpreted to require a different approach to these situations.⁶¹ The amendments will provide the benefit of certainty regarding the duties of funds and financial intermediaries under the rule without imposing additional costs.

B. Costs

Many commenters expressed concerns about the costs of rule 22c-2 as adopted in 2005. As discussed above, we anticipate that the amendments adopted today will allow funds, financial intermediaries, and investors to incur significantly reduced costs. Although these amendments will reduce many of the costs of the rule, they should nonetheless maintain the

investor protections afforded by the rule.

One of the primary results of these amendments will be to reduce the number of financial intermediaries with which funds must enter into shareholder information agreements. This should reduce costs to all participants by allowing funds to enter into shareholder information agreements only with those intermediaries that hold omnibus accounts that are most likely to trade fund shares frequently. The rule's investor protections will be maintained because funds will continue to monitor the short-term trading activity of the rest of the fund's omnibus accounts as if they were individual investors in the fund, according to the fund's policies on short-term trading.

The amendments will reduce the number of entities that will be considered financial intermediaries under the rule. Commenters in 2005 raised concerns about the costs of identifying which account holders are financial intermediaries.⁶² The costs related to this review will be greatly reduced under the rule as we have revised it, because we expect that a fund will generally already have identified those account holders that it does not treat as an individual investor for purposes of its restrictions on short-term trading. As discussed above in the benefits section, for purposes of the Paperwork Reduction Act, we have estimated that completion of this identification process will cost all funds a total of approximately \$9 million.

We also received a few comments on the 2005 adoption regarding the number of accounts maintained by funds that qualify as financial intermediaries.⁶³ Commenters indicated that revising the rule to address concerns about the

⁶² As discussed above, the ICI noted that, between just three large fund complexes, 6.5 million accounts may need to be reviewed, and estimated that the total number of accounts which would be evaluated by all funds could be in the "tens of millions." Comment Letter of the Investment Company Institute at 3 (May 9, 2005). OppenheimerFunds noted that, although it has more than 7.5 million shareholder accounts in its records, 137,000 or fewer of those accounts may qualify as financial intermediaries under the rule as adopted last spring. See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005). Neither commenter estimated the costs of performing this review.

⁶³ OppenheimerFunds estimated that it has 137,000 omnibus accounts that might qualify as financial intermediaries, USAA Investment Management Company stated that it has "thousands" of these accounts, and T. Rowe Price estimated 1.3 million accounts that are not registered as natural persons. See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005); Comment Letter of USAA Investment Management Company at 2 (May 9, 2005); Comment Letter of T. Rowe Price Associates, Inc. at 2 (May 24, 2005).

definition of financial intermediaries would significantly reduce the costs of entering into or modifying these agreements, as well as the costs of developing, maintaining and monitoring the systems that will collect the shareholder information related to these agreements for funds.⁶⁴ Omnibus accountholders that previously would have qualified as financial intermediaries are also likely to realize substantial savings under the amended rule. When an omnibus accountholder is treated as an individual investor (or does not trade directly with the fund), such an omnibus account will no longer be treated as a financial intermediary and will not incur the costs of entering into or modifying agreements with that fund. There will also no longer be the start-up and ongoing costs of developing and maintaining shareholder information-sharing systems for those accountholders.

In 2005, we received a few comments regarding the costs of modifying or entering into shareholder information agreements. One of the few commenters that gave specific numbers indicated that it would take approximately four hours to modify and/or enter into, follow up on, and maintain an agreement on its systems for each account identified as a financial intermediary.⁶⁵ The same commenter indicated that it may have as many as 137,000 accounts that might qualify as financial intermediaries under the rule as adopted. We anticipate that the large majority of the omnibus accountholders that would have qualified as financial intermediaries under the rule as initially adopted, will now be treated as individual investors by funds, and therefore no new agreements will be required. As discussed in the 2006 Proposing Release, we anticipate that in most cases, complying with the amended rule will require a very limited number of new agreements between funds and intermediaries (in many cases virtually no new agreements would be required).⁶⁶ We understand that the number of existing agreements that funds have with their intermediaries can vary greatly, from less than 10 agreements for a small direct-sold fund, to 3,000 or more agreements for a very large fund complex sold through various channels.⁶⁷ Although funds will still need to modify the existing agreements

⁶⁴ See Comment Letter of USAA Investment Management Company at 2 (May 9, 2005); Comment Letter of the ICI at 3 (May 9, 2005).

⁶⁵ See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005).

⁶⁶ See 2006 Proposing Release, *supra* note 8, at text following n.55.

⁶⁷ See *id.*

⁵⁹ See Comment Letter of Massachusetts Mutual Life Insurance Company (Apr. 10, 2006); Comment Letter of the Investment Company Institute (Apr. 10, 2006).

⁶⁰ See Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

⁶¹ See Comment Letter of the Investment Company Institute at 4 (May 9, 2005).

that they have with their intermediaries (*i.e.*, distribution agreements), we believe that these amendments will greatly reduce or eliminate the need for most funds to identify and negotiate new agreements. Funds are also likely to incur lower costs when modifying existing agreements than when entering into new agreements, and the actual hours required to modify an existing agreement thus may be less than the four hour figure suggested by the commenter.⁶⁸ Accordingly, based on the cost data provided by this commenter, we estimate that the cost reduction that may result from the amendments for a fund complex in a similar position as the commenter could be approximately 536,000 hours.⁶⁹

For purposes of the Paperwork Reduction Act as discussed below, we have estimated that it will cost all funds and financial intermediaries a total of approximately \$53,550,000 to enter into and/or modify the agreements required under the amended rule.⁷⁰ This represents a significant cost reduction from the estimates provided to us in response to the rule's adoption.⁷¹

⁶⁸ See Comment Letter of OppenheimerFunds, Inc. (May 9, 2005). Section VI below contains a discussion, in the context of the Paperwork Reduction Act, of some of the estimated costs of the shareholder information agreement and information-sharing system development and operations aspects of the rule.

⁶⁹ See Comment Letter of OppenheimerFunds, Inc. (May 9, 2005). This estimate is based on the following calculations: 137,000 potential accounts times 4 hours per account equals 548,000 potential hours. However, the amendments might eliminate the burden of reviewing and modifying those 137,000 potential accounts, and could limit the burden to a far reduced number, perhaps 3,000 agreements for a very large fund. (3,000 agreements to be modified times 4 hours equals 12,000 hours.) Instead of potentially incurring 548,000 hours complying with the agreement portion of the rule, a similar fund might incur 12,000 hours in modifying its existing agreements, for a savings of 536,000 hours (548,000 potential hours minus 12,000 hours equals 536,000 hours saved).

⁷⁰ See *infra* Section VII.

⁷¹ However, this revised estimate is a significant increase over the amount we estimated in the Adopting Release (\$3,353,279) for funds and intermediaries to enter into shareholder information agreements. See Adopting Release, *supra* note 4, at n.108. In response to our request for comment on any aspect of the rule's implementation, we received new information and updated estimates that noted that the cost of entering into agreements for funds and intermediaries would be significantly higher than the estimate included in the Adopting Release. After reviewing the comments we received in response to the Adopting Release, as well as other information received from fund representatives prior to the 2006 Proposing Release, we estimated in the 2006 Proposing Release that on average, a fund complex might incur \$250,000 or more in expenses related to entering into or modifying the agreements required under the rule as adopted. See 2006 Proposing Release, *supra* note 8, at n.59. With approximately 900 fund complexes currently operating, we therefore estimate that the agreement portion of the rule as adopted could potentially cost all funds a total of approximately

There will also be some costs related to the amendments we are adopting to the rule regarding chains of intermediaries. By clearly defining the duties that a fund's agreement must impose on intermediaries in the "chain of intermediaries" context, the proposed rule amendments may result in first-tier intermediaries incurring some costs that might otherwise have been borne by funds. These may include costs related to negotiating agreements (if necessary) with indirect intermediaries, processing requests from funds to investigate accounts, costs related to collecting and providing the underlying shareholder information to funds from the indirect intermediaries and restricting further trading by indirect intermediaries if the fund requests it. We believe that first-tier intermediaries are in a better position than funds to fulfill these obligations. Unlike funds, first-tier intermediaries have a direct relationship with second-tier intermediaries (and may be in a better position than funds to collect information from other indirect intermediaries), and will thus be able to identify, communicate with, and collect information from these indirect intermediaries at a lower cost than if funds were to conduct such activities. First-tier intermediaries are also in a better position than funds to identify and gather shareholder information from more distant indirect intermediaries because of their relationships with second-tier intermediaries.

As further discussed in connection with the Paperwork Reduction Act, we have estimated that the costs of entering into arrangements between first-tier and more indirect intermediaries will be approximately \$63 million.⁷² We anticipate that intermediaries will generally use the same systems that they use to provide the required underlying shareholder identity and transaction information directly to funds to process the information that first-tier intermediaries will forward (or have forwarded) to funds from indirect intermediaries, thus resulting in significant cost efficiencies.

Funds and intermediaries may also incur some costs related to drafting or revising terms for the agreements required by rule 22c-2. We have been

\$225,000,000. Despite the increase in estimated costs for entering into agreements that we have included here over the cost estimates included in the Adopting Release, we anticipate that the amendments will reduce the costs of the agreement portion of the rule as adopted by approximately \$171,450,000 (\$225,000,000 (updated cost estimate) minus \$53,550,000 (cost estimate after proposed amendments) equals \$171,450,000 (total potential cost reduction)).

⁷² See *infra* note 131 and accompanying text.

informed that industry representatives are working together to develop a uniform set of model terms, and anticipate that such model terms may significantly reduce the costs related to developing individualized agreement terms for each fund and intermediary.⁷³ As further discussed in the Paperwork Reduction Act section of this release, for purposes of the Paperwork Reduction Act, we estimate that a typical fund complex will incur a total of 5 hours of legal time at \$300 per hour in drafting these agreement terms, for a total of 4,500 hours for all 900 fund complexes at a total cost of \$1,350,000.

We understand that several service providers are developing systems to accommodate the transmission and receipt of transaction information between funds and intermediaries pursuant to contracts negotiated to comply with rule 22c-2. At least one of these organizations is revising the infrastructure that it already has in place, in order to facilitate the communication of fund trades and other "back office" information between funds and financial intermediaries, including the information required under the rule. We understand that, with the exception of some smaller to mid-sized funds and intermediaries, the large majority of funds and intermediaries currently use the organization's existing infrastructure to process fund trades.⁷⁴ In addition, some funds, intermediaries, or third party vendors may develop their own competing or complementary information-sharing systems.⁷⁵

Commenters on the 2006 Proposing Release suggested that in complying with the amended rule, funds and intermediaries may choose to incur certain additional costs in analyzing data received under shareholder information agreements, including costs for additional staffing, third-party vendors, and data repositories.⁷⁶ Generally, any such potential costs would be a consequence of the initial rule adoption, and are not a result of these rule amendments. These potential costs are also likely to vary significantly among entities depending on their size, the services they use, and the frequency with which they request and analyze information, among other factors.

⁷³ See Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

⁷⁴ See 2006 Proposing Release, *supra* note 8, at text following n.61.

⁷⁵ See *id.* at n.40.

⁷⁶ See, e.g., Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

One commenter on the 2006 Proposing Release noted that, as a large fund complex, it had received estimates of up to \$730,000 a year for a third party to provide information transmittal systems, certain data analysis, and data repository services for the information requested under shareholder information agreements.⁷⁷ Such third-party vendor systems costs will vary significantly depending on the size of the fund complex, the frequency that information is requested, the length of time the information is stored, any analysis performed, a fund's preexisting internal resources, and many other factors. In the Paperwork Reduction Act section below, we have estimated the costs we believe an average fund will incur in building these systems internally, or in using a third party vendor to provide these services. The same commenter also suggested that intermediaries might incur third party vendor costs to store and process data, and make it available to funds, with such costs possibly ranging up to \$170,000 in start up costs, and \$360,000 a year in annual costs.⁷⁸ We have incorporated the estimates provided by commenters on the 2006 Proposing Release into the cost calculations we made for purposes of the Paperwork Reduction Act, and as a result have increased the cost estimates made in this release over the estimates provided in the 2006 Proposing Release.⁷⁹

One commenter also suggested that funds and intermediaries might choose to hire additional staff to process information received under the rule, although it noted that if the current volume of transactions continues, a fund in its position probably would not need to hire additional staff.⁸⁰ Other commenters did not estimate the potential costs related to hiring

additional staff, the number of additional staff that might be hired, or the likelihood that more staff would be needed. In some circumstances, funds or intermediaries might choose to hire additional staff to process information received under the rule, but funds and intermediaries are likely to have sufficient staff in place to monitor frequent trading abuses that violate fund policies, and therefore are unlikely to need more staff under the amended rule.⁸¹ The rule, by requiring funds to set up formalized information-sharing networks with their intermediaries, might also result in more efficient monitoring of frequent trading by funds and possible opportunities to reduce staff.

In response to comments received on the 2006 Proposing Release, we have revised certain of our cost estimates upwards over those discussed in the 2006 Proposing Release. As further described in Section VI below, for purposes of the Paperwork Reduction Act, we have estimated that all funds will incur a total of approximately \$47,500,000⁸² in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and receive the required identity and transaction information from intermediaries, and a total of \$22,655,000 each year thereafter in operation costs related to the transmission and receipt of the information.⁸³ We have also estimated that financial intermediaries may incur \$280,000,000⁸⁴ in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of \$192,500,000⁸⁵ each year thereafter in operation costs related to the transmission and receipt of the information. These estimates were made for purposes of the Paperwork Reduction Act, and do not include certain costs, discussed above, that funds and intermediaries may incur

which are not related to collections of information required by the rule. For example, the Paperwork Reduction Act estimates do not include all potential staffing costs, outside vendor analysis of information to discern trading patterns, or data repository costs that funds and intermediaries may incur in analyzing the information that they may collect under the agreements required by the rule. Although these are costs that funds and intermediaries may choose to incur, they are not required by the rule, and may vary significantly between every fund and intermediary depending on the frequency of data requests, their policies on frequent trading, their ability to analyze information, and many other factors.

For the reasons discussed above, we anticipate that these amendments will not create additional costs beyond the rule as adopted. In fact, we anticipate that the amendments will significantly reduce costs to most market participants.⁸⁶

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. As discussed in the Cost-Benefit Analysis above, these amendments to rule 22c-2 are designed to reduce the burdens of the rule as adopted in 2005, while maintaining its investor protections. Funds will no longer be required to incur the expense of modifying or entering into agreements with omnibus accounts that they already effectively monitor by treating as individual investors, and would not need to enter into agreements with intermediaries that do not trade directly with the fund. These amendments will promote efficiency in the capital markets by enabling funds to focus their short-term trading deterrence efforts on those omnibus accounts that could be used to disguise this type of trading. These amendments will also promote efficiency by reducing the number of omnibus accountholders that would otherwise incur the expenses of entering into agreements, and of establishing and maintaining systems for collecting and sharing shareholder information.

We do not anticipate that these amendments will harm competition.

⁷⁷ See Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006). The commenter has informed our staff that the latest estimates it has received have been revised downwards to \$620,000 a year for these services.

⁷⁸ *Id.*

⁷⁹ See *infra* Section VI.

⁸⁰ See Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006). During further discussions with the commenter, it noted that the cost of hiring one additional analyst to monitor information received under rule 22c-2 and these amendments could be approximately \$35,000-40,000 a year, exclusive of overhead. Although we believe that most funds will not need to hire additional staff to comply with rule 22c-2, we estimate that the cost of hiring one additional senior compliance examiner could be \$347,000 a year, inclusive of overhead and other expenses (based on compensation estimates for a Senior Compliance Examiner, from the *Securities Industry Assoc., Report on Management & Professional Earnings in the Securities Industry* (2005), multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

⁸¹ See, e.g., Compliance Programs of Investment Companies and Investment Advisers, *supra* note 43 at n.75 and surrounding text.

⁸² This estimate, as well as many other estimates in this section may differ from the estimates made in the 2006 Proposing Release. These differences reflect new information provided to us by commenters, and are further discussed in Section VI.

⁸³ See *infra* Section VI.

⁸⁴ We estimate a total of approximately \$327,500,000 in one time start-up costs (\$280,000,000 + \$47,500,000 = \$327,500,000) for purposes of the Paperwork Reduction Act.

⁸⁵ We estimate a total of approximately \$215,155,000 in ongoing annual costs (\$192,500,000 + \$22,655,000 = \$215,155,000) for purposes of the Paperwork Reduction Act.

⁸⁶ See *infra* note 135.

They apply to all market participants and, as discussed in the Cost-Benefit Analysis above, serve to reduce cost burdens for large funds as well as small funds.⁸⁷ Some commenters expressed concern that the rule as adopted may disproportionately burden small intermediaries, and thus hinder competition.⁸⁸ We anticipate that under these amendments, most omnibus accounts that are treated by the fund as individual investors will be small intermediaries. By excluding these small intermediaries from the rule's requirements, the amendments should serve to alleviate potential anti-competitive effects on small intermediaries.

These amendments are designed to reduce the costs of imposing redemption fees for both funds and intermediaries. Even after these amendments, the competitive pressure of marketing funds, especially smaller funds, coupled with the costs of imposing redemption fees in omnibus accounts, may deter some funds from imposing redemption fees. Intermediaries may use their market power to prevent funds from applying the fees, or provide incentives for fund groups to waive fees. However, by reducing the costs of imposing redemption fees, we believe that these amendments will likely reduce such anti-competitive effects.

We anticipate that these amendments may indirectly foster capital formation by reducing the costs of the rule for funds and intermediaries. If these cost savings are passed on to investors, they may increase investment in funds, thereby promoting capital formation. These amendments also may foster capital formation by improving the beneficial effect of the rule on investor confidence, because the rule is designed to permit funds to deter, and recoup the costs of, abusive short-term trading. To the extent that the amended rule enhances investor confidence in funds, investors are more likely to make assets available through intermediaries for investment in the capital markets.

VI. Paperwork Reduction Act

As discussed in the Adopting Release,⁸⁹ the rule includes "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.⁹⁰ The Commission submitted the collections of information to the Office of Management and Budget

("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, and OMB approved these collections of information under control number 3235-0620 (expiring 06/30/2009). The title for the collection of information requirements associated with the rule is "Rule 22c-2 under the Investment Company Act of 1940, Redemption fees for redeemable securities." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

In response to the 2006 Proposing Release, we received a number of comments on the estimates made in the Paperwork Reduction Act section, and which provided additional cost estimates and other information.⁹¹ In light of those comments, we have revised upwards several of the per-fund estimates made in this section. However, because these amendments reduce the number of shareholder information agreements required, we estimate that the amendments should, in general, reduce the aggregate burden associated with the collections of information required by the rule, and will not create new collections of information. We have revised our previous burden estimates under the Paperwork Reduction Act to reflect (i) new cost and time burden information that we have received from market participants, and (ii) the revised number of entities that will be affected by the amended rule.

This revised Paperwork Reduction Act section contains a number of new cost and hour estimates that are significantly altered from the estimates made in the Adopting Release. Some of these estimates are based on different methods, and different sources, from those in the Adopting Release. Therefore there is not a strict comparability between the estimates made here and those made in the Adopting Release. These cost estimates, hourly rate estimates, and the methodology used to make these proposed estimates are based on comments we received in response to the Adopting Release and the 2006 Proposing Release, as well as information received from funds, intermediaries, and other market participants.⁹²

⁸⁷ See, e.g., Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

⁸⁸ See 2006 Proposing Release, *supra* note 8, at Sections VI and VIII. In general, the cost estimates provided in this section are derived from rounded and weighted averages of the cost estimates

Rule 22c-2 includes two distinct "collections of information" for purposes of the Paperwork Reduction Act. The first is related to shareholder information agreements, including the costs and time related to identifying the relevant intermediaries, drafting the agreements, negotiating new agreements or modifying existing ones, and maintaining the agreements in an easily accessible place. The second is related to the costs and time related to developing, maintaining, and operating the systems to collect, transmit, and receive the information required under the shareholder information agreements.⁹³

Both collections of information are mandatory for funds that choose to redeem shares within seven days of purchase. These funds will use the information collected to ensure that shareholders comply with the fund's policies on abusive short-term trading of fund shares. There is a six year recordkeeping retention requirement for the shareholder information agreements required under the rule. Any responses that are provided in the context of the Commission's examination and oversight program are generally kept confidential.⁹⁴

A. Shareholder Information Agreements

The Commission staff anticipates that most shareholder information agreements will be entered into at the fund complex level, and estimates that there are approximately 900 fund complexes. The Commission staff understands that the number of intermediaries that hold fund shares can vary for each fund complex, from less than 10 for some fund complexes to more than 3000 for others. Based on conversations with fund and financial intermediary representatives that took place prior to the 2006 Proposing Release, our staff estimates that, on average, under the revised definition of financial intermediary, each fund complex has 300 financial intermediaries. We understand that most funds already know and previously identified the majority of their intermediaries that they do not treat as individual investors. Therefore, funds should expend a limited amount

provided during conversations with industry representatives that took place prior to the 2006 Proposing Release, combined with the additional information submitted by commenters on that release.

⁹³ This second collection of information does not include potential costs or time that funds or intermediaries might incur in analyzing or using the provided information.

⁹⁴ For a discussion of restrictions on the disclosure of information under applicable privacy laws, see *supra* note 44.

⁸⁷ See *supra* Section IV.

⁸⁸ See, e.g., Comment Letter of the Investment Company Institute (May 9, 2005).

⁸⁹ See Adopting Release, *supra* note 4, at Section V.

⁹⁰ 44 U.S.C. 3501-3520.

of time and costs related to the identification of such intermediaries. Our staff estimates that identifying the intermediaries with which a fund complex must enter into agreements may take the average fund complex 250 hours of a service representative's time at a cost of \$40 per hour,⁹⁵ for a total of 225,000 hours at a cost of \$9,000,000.⁹⁶ Our staff estimates that for a fund complex to prepare the model agreement, or provisions modifying a preexisting agreement, between the fund and the intermediaries, it will require a total of 5 hours of legal time at \$300 per hour, for a total of 4500 hours⁹⁷ at a total cost of \$1,350,000.

The Commission staff estimates that for a fund complex to enter into or modify a shareholder information agreement with each existing intermediary, it will require a total one-time expenditure of approximately 2.5 hours of fund time and 1.5 hours of intermediary time for each agreement, for a total of 4 hours expended per agreement.⁹⁸ Therefore, for an average fund complex to enter into shareholder agreements, the fund complex and its intermediaries may expend approximately 1200 hours at a cost of \$48,000,⁹⁹ and all fund complexes and intermediaries may incur a total one-time burden of 1,080,000 hours at a cost of \$43,200,000.¹⁰⁰ The Commission staff understands that there are efforts under way (including an industry task force devoted to the project) to produce standardized shareholder information-sharing model agreements and terms.¹⁰¹

⁹⁵ The title and hourly cost of the person performing the intermediary identification and entering into agreements may vary depending on the fund or financial intermediary. This \$40 per hour cost is an average estimate for the hourly cost of employing the person doing the relevant work, derived from conversations with industry representatives that took place prior to the 2006 Proposing Release.

⁹⁶ This estimate is based on the following calculations: 250 hours times 900 fund complexes equals 225,000 hours, and 225,000 hours times \$40 equals \$9,000,000.

⁹⁷ This estimate is based on the following calculation: 5 hours times 900 fund complexes equals 4500 hours of legal time.

⁹⁸ The 4 hour figure represents time incurred by both the fund and the financial intermediary for each agreement. The Commission staff estimates that this 4 hour figure is comprised of approximately 2.5 hours of a fund service representative's time at \$40 per hour and 1.5 hours of an intermediary representative's time at \$40 per hour.

⁹⁹ This estimate is based on the following calculations: 4 hours times 300 intermediaries equals 1200 hours; and 1200 hours times \$40 dollars per hour equals \$48,000.

¹⁰⁰ This estimate is based on the following calculations: 1200 hours times 900 fund complexes equals 1,080,000 hours; and 1,080,000 hours times \$40 per hour equals \$43,200,000.

¹⁰¹ See 2006 Proposing Release, *supra* note 8, at text accompanying n.45.

These efforts may reduce the costs associated with the agreement provision of the rule for both funds and intermediaries.¹⁰² Finally, the Commission staff does not anticipate that funds or intermediaries will incur any new costs in maintaining these agreements in an easily accessible place, because such maintenance is already done as a matter of course.

The staff therefore estimates that, for purposes of the Paperwork Reduction Act, the shareholder information agreement provision of the rule as revised will require a total of 1,309,500 hours at a total cost of \$53,550,000.¹⁰³

B. Information-Sharing

Some funds and intermediaries will incur the system development costs discussed in this section, but many will not because they already process all of their trades on a fully disclosed basis, use a third party administrator to handle their back office work,¹⁰⁴ or already have systems in place that allow intermediaries to transmit the shareholder identity and transaction information to funds. Other funds and intermediaries may have special circumstances that may increase the costs they face in developing and operating systems to comply with the rule. The estimates below represent the Commission staff's understanding of the average costs that might be encountered by a typical fund complex or intermediary in complying with the information-sharing aspect of the rule as amended.

1. Funds

The Commission staff understands that various organizations have developed, or are in the process of developing, enhancements to their systems that will allow funds and intermediaries to share the information required by the rule without developing or maintaining systems of their own.¹⁰⁵ Our staff anticipates that most funds and intermediaries will use these systems, and will generally make minor

¹⁰² See, e.g., Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

¹⁰³ This estimate is based on the following calculations: 4500 hours of legal drafting time plus 1,080,000 hours of agreement negotiating time plus 225,000 hours of intermediary identification time equals 1,309,500 total hours; and \$43,200,000 plus \$1,350,000 plus \$9,000,000 equals \$53,550,000.

¹⁰⁴ Third party administrators maintain accounts for many other intermediaries, and therefore incur the costs to develop a single system.

¹⁰⁵ These service providers systems include the National Securities Clearing Corporation's Fund/SERV system, as well as other systems being developed by a number of other providers such as SunGard, BISYS, AccessData, and Charles Schwab. See, e.g., Comment Letter of AccessData Corp. (Apr. 10, 2006).

changes to their back office systems to comply with the rule requirements and to match their systems to those of the service providers. Our staff estimates that most funds could adapt their in-house systems to utilize these service providers' systems at a one-time cost of approximately \$10,000 or less.¹⁰⁶ Although the costs that systems providers will charge may vary, one large provider has indicated that it plans to charge a monthly fee of \$200 and fees of 25 cents for every 100 account transactions requested through the service.¹⁰⁷

As an example of the cost of using these services, if a fund complex requests information for 100,000 transactions each week,¹⁰⁸ then it would incur costs of \$250 each week, or \$13,000 a year, plus the monthly fee of \$200, equaling \$2,400 a year, for a total cost of \$15,400 a year.¹⁰⁹ Our staff estimates that approximately 475 fund complexes would use these systems (including substantially all of the largest, and most of the medium-sized, fund complexes). If all of these complexes use these service providers' systems at the rate described above, they would incur a one-time system development cost of \$4,750,000¹¹⁰ and an annual system use cost of approximately \$7,315,000.¹¹¹ Those 475 fund complexes may also incur system development costs related to the processing of information under the rule on trades that they receive through other channels than these service providers' systems, which we estimate to cost an average approximately \$50,000 per fund

¹⁰⁶ We expect that, in many cases, upgrades to fund transfer agents' as well as fund complex's systems will take place, and the transfer agents' costs will be charged back to the fund complex.

¹⁰⁷ See National Securities Clearing Corporation, Networking Service to Support SEC Rule 22c-2, Important Notice A #6228, P&S #5798 (Apr. 12, 2006) (available at <http://www.nccc.com/impnot/notices/notice2006/a6228.pdf>).

¹⁰⁸ The number of transactions and weekly request used here is an example, and is not intended to be a guideline as to how often a fund should request information under the rule. The frequency of information requests could vary significantly based on a wide variety of factors, as discussed in Section I.I.C above.

¹⁰⁹ This estimate is based on the following calculations: 100,000 transaction requests times one quarter of a cent (the charge is 25 cents per 100 transactions requested, or one quarter of a cent per transaction) equals \$250; \$250 times 52 weeks equals \$13,000; \$200 monthly charges times 12 months equals \$2,400; and \$13,000 plus \$2,400 equals \$15,400. The costs of utilizing these services may vary widely, based on the frequency funds make information sharing requests, and the number of accounts requested.

¹¹⁰ This estimate is based on the following calculation: 475 fund complexes times \$10,000 (one-time system update costs) equals \$4,750,000.

¹¹¹ This estimate is based on the following calculation: 475 fund complexes times \$15,400 (annual costs) equals \$7,315,000.

complex, and \$20,000 annually,¹¹² for a total of \$23,750,000¹¹³ in system development costs and \$9,500,000 annually.¹¹⁴ Our staff estimates that the total system development cost for these 475 fund complexes that are likely to use these existing systems is \$28,500,000 with annual operation costs of \$16,815,000.¹¹⁵

There are approximately 900 fund complexes currently operating, of which approximately 475 may use these existing systems, leaving approximately 425 fund complexes possibly needing to develop specific systems to meet their own particular needs. Our staff understands that approximately 75 percent of those fund complexes (or 319 complexes) are small to medium-sized direct-sold funds that have a very limited number of intermediaries. Our staff anticipates that those 319 fund complexes would incur minimal system development costs to comply with the information-sharing provisions of the rule, due to the limited number of intermediaries with which they interact. Our staff estimates that system development costs for handling information under the rule for those 319 fund complexes will be approximately \$25,000 each, with annual operation costs of approximately \$10,000, for a

total system development cost of \$7,975,000¹¹⁶ and an annual operations cost of \$3,190,000.¹¹⁷

The remaining approximately 106 fund complexes may face additional complexities or special circumstances in developing their systems. Our staff estimates that the start-up costs for those fund complexes will be approximately \$100,000 per fund complex and the annual costs for handling the information will be approximately \$25,000, for a total start-up cost of \$10,600,000 and an annual cost of \$2,650,000 for these fund complexes.¹¹⁸

For purposes of the Paperwork Reduction Act, our staff therefore estimates that the information-sharing provisions of the rule as amended will cost all fund complexes a total of approximately \$100,625,000 in one-time capital costs to enter into agreements and develop or upgrade their software and other technological systems that allows them to collect, store, and receive the required identity and transaction information from intermediaries, and a total of \$22,655,000 each year thereafter in operation costs related to the transmission and receipt of the information.¹¹⁹

2. Intermediaries

The Commission staff estimates that there are approximately 7000 intermediaries that may provide information pursuant to the information-sharing provisions of rule 22c-2.¹²⁰ Of those 7000 intermediaries,

our staff anticipates that approximately 350 of these intermediaries are likely to primarily use the existing systems that are in place or under development. The staff understands that these approximately 350 intermediaries include several major "clearing brokers" and third-party administrators that aggregate trades and handle the back-end work for thousands of other smaller broker-dealers and intermediaries, thereby providing access to these service providers' information-sharing systems to a significant majority of all intermediaries in the marketplace. Our staff estimates that these approximately 350 intermediaries will provide access to systems that will allow for the transmission of information required by the rule and other processing for the transactions of approximately 80 percent of the 7,000 intermediaries (5,600 intermediaries) affected by the rule, leaving 1,400 intermediaries that do not in some way utilize these systems, that may need to develop their own systems.¹²¹

Our staff understands that in general, the providers who have developed or are developing these information sharing systems charge the fund, and not the intermediary, for providing these systems to transmit shareholder identity and transaction information, or else include access to such systems as a complementary part of their other processing systems, and do not charge additional fees to intermediaries for its utilization. These intermediaries may be required to develop systems to ensure that they are able to transmit the records to these service providers in a standardized format.¹²² Our staff estimates that it will cost each of these 350 intermediaries approximately \$200,000 to update its systems to record

do their business through a registered broker-dealer on the same premises), and approximately 2,000 retirement plans, third-party administrators, and other intermediaries (this number may be either over or under inclusive, because under the rule as we are amending it, the actual number of intermediaries that funds have is dependent on the precise application of varying fund policies on short-term trading).

¹²¹ This number is based on the following calculation: 7,000 total intermediaries times 20% (the percentage of intermediaries that do not use these service providers systems or use the services of those 350 intermediaries that use those service provider systems) equals 1,400 intermediaries that do not use service providers' systems.

¹²² Our staff anticipates that in most cases, first-tier intermediaries will use the same or slightly modified systems that have been developed to identify and transmit shareholder identity and transaction information to funds when collecting and transmitting this information from indirect intermediaries. Therefore, we have also included the costs of developing and operating systems to collect information from indirect intermediaries and providing the information to funds in these estimates.

¹¹² In response to the 2006 Proposing Release, many commenters discussed the difficulty of estimating the costs of creating and operating information-sharing systems. As a result, very few monetary cost estimates were submitted by commenters. One fund commenter did provide some monetary estimates, and noted that although it agreed that many of the cost estimates made in the 2006 Proposing Release were reasonable, it believed that the Commission may have underestimated some of the costs it will likely encounter when designing and operating information sharing systems. See Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006). The commenter noted that additional staffing, data repository, and intermediary vendor costs related to information sharing systems may result in costs significantly higher than those estimated in the Paperwork Reduction Act section of the 2006 Proposing Release. We agree that these may be significant costs, but note that the estimates made in this section are limited to the scope of the Paperwork Reduction Act, and therefore do not include all of the costs encountered by funds and intermediaries in implementing the rule that are not related to a "collection of information" as defined under that Act. 44 U.S.C. 3501-3520. Other costs and benefits of the rule, including the costs mentioned by that and other commenters, are discussed in Section IV of this Release.

¹¹³ This estimate is based on the following calculation: 475 fund complexes times \$50,000 system development cost per fund complex equals \$23,750,000.

¹¹⁴ This estimate is based on the following calculation: 475 fund complexes times \$20,000 annual costs per fund complex equals \$9,500,000.

¹¹⁵ This estimate is based on the following calculations: \$23,750,000 plus \$4,750,000 (one-time system development costs) equals \$28,500,000 total start-up costs for fund complexes utilizing existing systems; and \$7,315,000 plus \$9,500,000 equals \$16,815,000 in annual costs.

¹¹⁶ This estimate is based on the following calculation: 319 funds times \$25,000 equals \$7,975,000.

¹¹⁷ This estimate is based on the following calculation: 319 funds times \$10,000 equals \$3,190,000.

¹¹⁸ This estimate is based on the following calculations: 106 funds times \$100,000 equals \$10,600,000; and 106 funds times \$25,000 equals \$2,650,000.

¹¹⁹ This estimate is based on the following calculations: \$28,500,000 (funds that use service providers start-up costs) plus \$7,975,000 (direct-traded funds' start-up costs) plus \$10,600,000 (other funds' start-up costs) equals \$47,075,000 system development costs; \$47,075,000 (system development costs) plus \$53,550,000 (agreement costs) equals \$100,625,000 total fund start-up costs; and \$16,815,000 (funds that use service providers annual costs) plus \$3,190,000 (direct-traded funds' annual costs) plus \$2,650,000 (other funds' annual costs) equals \$22,655,000 annual funds' costs.

¹²⁰ This number is a rounded estimate, based on the number of intermediaries that may be affected by the rule. The number consists of the following: 2,203 broker-dealers classified as specialists in fund shares, 196 insurance companies sponsoring registered separate accounts organized as unit investment trusts, approximately 2,400 banks that sell funds or variable annuities (the number of banks is likely over inclusive because it may include a number of banks that do not sell registered variable annuities or funds, or banks that

and transmit shareholder identity and transaction records to these service providers, and an additional \$100,000 each year to operate their own systems for communicating with the service providers, for a total start-up cost of \$70,000,000, and an annual cost of \$35,000,000.¹²³ We understand that these approximately 350 intermediaries may also have to upgrade their systems to handle rule 22c-2 information on trades that do not go through the service providers' systems. Our staff estimates that it will cost each of those 350 intermediaries¹²⁴ an additional \$400,000¹²⁵ to update their systems, and \$250,000¹²⁶ annually to process this information through non-service provider networks, for a total cost of \$140,000,000 in system development costs and \$87,500,000 in annual costs to process data through non-service provider networks.¹²⁷ We have increased these estimates over those made in the 2006 Proposing Release in light of the new cost information provided to us by the commenters in 2006. Our staff therefore estimates that these approximately 350 intermediaries will incur a total of approximately \$210,000,000 in start-up costs and \$122,500,000 in annual costs associated

¹²³ This estimate is based on the following calculations: 350 broker-dealer times \$200,000 (start-up costs) equals \$70,000,000; and 350 broker-dealer times \$100,000 (start-up costs and annual costs) equals \$35,000,000.

¹²⁴ The estimate includes higher costs for these 350 intermediaries in developing systems to handle non-service provider information than for remaining intermediaries to handle the same data due to our staff's understanding that, in general, these 350 intermediaries that utilize the service provider's networks represent the largest intermediaries in the marketplace, and will face the highest costs in complying with the rule.

¹²⁵ Many of the costs that intermediaries incur in developing and operating systems to handle this information may be recouped from fund complexes through a variety of methods. However, it is unclear what recoupment might take place, and therefore the cost estimates for funds and intermediaries are made here prior to any potential recoupment.

¹²⁶ In response to the 2006 Proposing Release, a few commenters provided additional cost estimates regarding the costs intermediaries may face in designing and operating information sharing systems under the amended rule. One commenter estimated that some intermediary system start-up costs may range from approximately \$125,000 to \$2,300,000, and that ongoing annual costs may range from \$150,000 to approximately \$1,000,000. See Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006). Another commenter estimated that for some insurance company intermediaries, the cost to comply with all aspects of the redemption fee rule could exceed \$2,000,000 per company. See Comment Letter of the National Association for Variable Annuities (Apr. 7, 2006). We have incorporated this additional information into our calculations for our revised estimates.

¹²⁷ This estimate is based on the following calculations: 350 broker-dealers times \$400,000 (start-up costs) equals \$140,000,000; and 350 broker-dealers times \$250,000 (annual costs) equals \$87,500,000.

with the information-sharing provisions of the rule.¹²⁸

The fund complexes and intermediaries that do not use these service providers' systems to process their trades will have to either develop their own systems to share information under the rule or engage some other third-party administrator to process the information. Our staff estimates that approximately 1,400 intermediaries will not utilize these service provider systems to process this information, and estimates that each of these intermediaries will incur \$50,000 in system development costs and \$50,000 in annual costs in complying with the rule, for a total of \$70,000,000 in development costs and \$70,000,000 in annual costs for those intermediaries.¹²⁹

Although the amended rule does not require first-tier intermediaries to enter into agreements with their indirect intermediaries to share the indirect intermediaries' underlying shareholder data to funds upon a fund's request, we anticipate that in many cases, intermediaries will nonetheless enter into such agreements, or at least enter into informal arrangements and design methods by which to collect the shareholder information. Our staff estimates that each of the 7,000 intermediaries potentially affected by the rule will spend approximately 150 hours of service representatives' time at \$40 per hour, and 10 hours of legal counsel time at \$300 per hour, for a total of 1,050,000 hours of service representatives' time at a cost of \$42,000,000, and 70,000 hours of in-house legal time at a cost of \$21,000,000 to design and enter into these arrangements with other intermediaries.¹³⁰ The Commission staff therefore estimates that intermediaries will expend a total of approximately 1,120,000 hours at a cost of \$63,000,000 to enter into arrangements to ensure the

¹²⁸ This estimate is based on the following calculations: \$70,000,000 (intermediary start-up costs for processing information through service providers) plus \$140,000,000 (intermediary start-up costs for handling information through other channels) equals \$210,000,000; and \$35,000,000 (intermediary annual costs for processing information through service providers) plus \$87,500,000 (intermediary annual costs for handling information through other channels) equals \$122,500,000.

¹²⁹ This estimate is based on the following calculations: 1,400 intermediaries times \$50,000 (development costs) equals \$70,000,000; and 1,400 intermediaries times \$50,000 (annual costs) equals \$70,000,000.

¹³⁰ This estimate is based on the following calculations: 7,000 intermediaries times 150 service representative hours at \$40 per hour equals 1,050,000 hours at a cost of \$42,000,000; and 7,000 intermediaries times 10 hours of in-house legal time at \$300 per hour equals 70,000 hours at a cost of \$21,000,000.

proper transmittal of information to funds through chains of intermediaries.¹³¹

Our staff estimates that the information-sharing provisions of the rule will cost all intermediaries a total of approximately \$343,000,000 in one-time capital costs to enter into agreements and develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of \$192,500,000 each year thereafter in operation costs related to the transmission and receipt of the information.¹³²

C. Total Costs and Hours Incurred

For purposes of the Paperwork Reduction Act, our staff estimates that the amended rule will have a total collection of information cost in the first year to both funds and intermediaries of \$443,625,000 in one-time start-up costs, and annual operation costs of \$215,155,000.¹³³ Our staff estimates that the weighted average annual cost of the rule to funds and intermediaries for each of the first three years would be \$363,030,000.¹³⁴ The total hours expended by both funds and intermediaries in complying with the amended rule will be a one-time expenditure of 2,429,500 hours at a total internal cost of \$116,550,000.¹³⁵ We

¹³¹ This estimate is based on the following calculations: 1,050,000 service representative hours at \$42,000,000 plus 70,000 in-house counsel hours at \$21,000,000 equals 1,120,000 hours at \$63,000,000.

¹³² This estimate is based on the following calculations: \$210,000,000 (intermediaries that use service providers start-up costs) plus \$70,000,000 (other intermediaries' start-up costs) plus \$63,000,000 (intermediary agreement costs) equals \$343,000,000 in intermediary start-up costs; and \$122,500,000 (annual costs of intermediaries that use service providers) plus \$70,000,000 (other intermediaries' annual costs) equals \$192,500,000 in annual costs.

¹³³ This estimate is based on the following calculations: \$100,625,000 (fund start-up costs) plus \$343,000,000 (intermediary start-up costs) equals \$443,625,000 in total start-up costs; and \$22,655,000 (fund annual costs) plus \$192,500,000 (intermediary annual costs) equals \$215,155,000 in total annual costs.

¹³⁴ This estimate is based on the following calculations: \$443,625,000 in total start-up costs plus \$645,465,000 (3 years at \$215,155,000 in total annual costs) equals \$1,089,090,000 in total costs over a three-year period. \$1,089,090,000 divided by three years, equals a weighted average cost of \$363,030,000 per year.

¹³⁵ This estimate is based on the following calculations: 1,309,500 hours at a cost of \$53,550,000 in agreement time plus 1,120,000 hours at a cost of \$63,000,000 in chain of intermediary arrangement time equals 2,429,500 hours at a cost of \$116,550,000.

For purposes of the Paperwork Reduction Act, Section VI of the Adopting Release, *supra* note 4, included an estimate of the total start-up costs to

anticipate that there will be a total of approximately 7900¹³⁶ respondents, with approximately 14,310,000 total responses in the first year, and 14,040,000 annual responses each year thereafter.¹³⁷

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (“FRFA”) has been prepared in accordance with 5 U.S.C. 604. It relates to amendments to rule 22c–2 under the Investment Company Act, which we are adopting in this Release. The Initial Regulatory Flexibility Analysis (“IRFA”) which was prepared in accordance with 5 U.S.C. 603 was published in the 2006 Proposing Release.

A. Need For and Objectives of Rule

Rule 22c–2 allows funds to recover some, if not all, of the direct and indirect (e.g., market impact and opportunity) costs incurred when shareholders engage in short-term trading of the fund’s shares, and to deter this short-term trading. As discussed more fully in Sections I and II of this Release, the amendments to rule 22c–2 are necessary to clarify the operation of the rule, to enable funds and intermediaries to reduce costs associated with entering into agreements under the rule, and to enable funds to focus their short-term trading deterrence efforts on the entities most likely to violate fund policies.

funds and financial intermediaries in complying with the collection of information aspect of the rule of approximately \$1,111,500,000. We now estimate that funds and intermediaries will incur the reduced amount of \$443,625,000 in start-up costs, for a potential cost reduction of approximately \$667,875,000 resulting from the amendments. In the Adopting Release we also estimated that the ongoing annual costs will be \$390,556,800. We now estimate that after these amendments funds and intermediaries will incur the reduced amount of \$215,155,000 in total annual costs, for a potential ongoing annual cost reduction of approximately \$175,401,800 resulting from the amendments.

¹³⁶ This estimate is based on the following calculation: 7,000 intermediaries plus 900 fund complexes equals 7,900 respondents.

¹³⁷ This estimate is based on the following calculation: 900 fund complexes with an average of 300 intermediaries each, equals 270,000 one time responses for the shareholder information portion of the collection (900 funds times 300 intermediaries equals 270,000). Assuming that each fund requests information from each of its intermediaries once each week (we have revised our initial monthly assumption to a weekly assumption, although we expect that the frequency of requests will vary significantly between funds depending on their circumstances), the total number of annual responses would be 14,040,000 (270,000 fund intermediaries times 52 weeks equals 14,040,000 annual responses). Therefore, in the first year, there would be 14,310,000 total responses (14,040,000 weekly responses plus the 270,000 initial responses required for the agreements) and 14,040,000 annual responses thereafter.

These amendments also set forth the limitations on transactions between a fund and an intermediary with whom the fund does not have an agreement.

B. Significant Issues Raised By Public Comment

We requested comment on the IRFA. We specifically requested comment on the number of small entities that would be affected by the rule amendments, and the likely effect of the amendments on small entities, the nature of any impact, and any empirical data supporting the extent of the impact. We received a number of comments discussing the impact that the rule amendments will have on small entities in the mutual fund marketplace. Generally, these comments supported the rule amendments, and agreed that the amendments would reduce the costs of compliance with the rule for small entities, and would reduce the number of small entities that would be required to comply with the rule.¹³⁸ They indicated that the rule amendments would reduce costs for all mutual fund marketplace participants and would alleviate many of the concerns they had expressed with the rule as it was originally adopted.

Although most commenters supported the rule amendments, some commenters also suggested other changes that may reduce the costs of compliance. A few commenters noted that as proposed, the amended rule might have posed some difficulties to funds (including small funds) in contracting with certain entities that do not qualify as financial intermediaries under the rule, but who nevertheless submit trades directly to funds on behalf of financial intermediaries.¹³⁹ In light of this concern, we have clarified the amended rule to require that if a financial intermediary submits orders directly, itself or through its agent, the fund must enter into a shareholder information agreement with that financial intermediary. This clarification should eliminate any confusion and attendant costs to small entities in determining whether and with which entities funds must enter into shareholder information agreements.

Some commenters noted that in some cases (such as foreign shareholders) Taxpayer Identification Numbers (“TINs”) may not always be available,

¹³⁸ See, e.g., Comment Letter of the Investment Company Institute (Apr. 10, 2006); Comment Letter of Charles Schwab & Co., Inc. (Apr. 10, 2006).

¹³⁹ See, e.g., Comment Letter of T. Rowe Price Associates, Inc. (Apr. 10, 2006); Comment Letter of Matrix Settlement & Clearing Services, L.L.C. (Apr. 10, 2006); and Comment Letter of the Investment Company Institute (Apr. 10, 2006).

and suggested that the rule allow for the use of alternate forms of identification in those cases.¹⁴⁰ To reduce the costs of compliance, alleviate any confusion, and provide flexibility to funds and intermediaries, we have revised the rule to allow for the use of Individual Taxpayer Identification Numbers or other government issued identifiers when a TIN is not available.

We also received many comments requesting an extension of the compliance date. Commenters noted that with the uncertainty accompanying the exact requirements of the rule, the significant technical challenges associated with compliance, and the current unsettled state of contracting and information sharing standards in the marketplace it would be very beneficial to provide an extended compliance date. We agree, and are extending the compliance date for all entities.¹⁴¹

C. Small Entities Subject to the Rule

A small business or small organization (collectively, “small entity”) for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.¹⁴² Of approximately 3,925 funds (2,700 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.¹⁴³ A broker-dealer is considered a small entity if its total capital is less than \$500,000, and it is not affiliated with a broker-dealer that has \$500,000 or more in total capital.¹⁴⁴ Of approximately 7,000 registered broker-dealers, approximately 880 are small entities.

As discussed above, rule 22c–2 provides funds and their boards with the ability to impose a redemption fee designed to reimburse the fund for the direct and indirect costs incurred as a result of short-term trading strategies, such as market timing. These amendments are designed to maintain these investor protections while reducing costs to market participants and clarifying the operation of the rule. While we expect that the rule and these

¹⁴⁰ See Comment Letter of the Investment Company Institute (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

¹⁴¹ See *supra* Section III.

¹⁴² 17 CFR 270.0–10.

¹⁴³ Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

¹⁴⁴ 17 CFR 240.0–10.

amendments will require some funds and intermediaries to develop or upgrade software or other technological systems to enforce certain market timing policies, or make trading information available in omnibus accounts, the amendments we are adopting today are specifically designed to reduce the costs incurred by small entities. In particular, we anticipate that the changes we are making to the definition of financial intermediary will significantly reduce the number of small intermediaries that funds must enter into agreements with, and reduce the burden of complying with the rule for small funds and small intermediaries.

D. Reporting, Recordkeeping, and Other Compliance Requirements

These amendments do not introduce any new mandatory reporting requirements. Rule 22c-2 already contains a mandatory recordkeeping requirement for funds that redeem shares within seven days of purchase. The fund must retain a copy of the written agreement between the fund and financial intermediary under which the intermediary agrees to provide the required shareholder information in omnibus accounts.¹⁴⁵ The amendments reduce the number of small entities that would otherwise be subject to this recordkeeping requirement.

E. Commission Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that these amendments would require the establishment of special compliance requirements or timetables for small entities. These amendments are specifically designed to reduce any unnecessary burdens on all funds (including small funds) and on small intermediaries. To establish special compliance requirements or timetables for small entities may in fact disadvantage small entities by

encouraging larger market participants to focus primarily on the needs of larger entities when establishing the information-sharing systems envisioned by the rule and these proposed amendments, and possibly ignoring the needs of smaller entities.

With respect to further clarifying, consolidating, or simplifying the compliance requirements of the rule, using performance rather than design standards, and exempting small entities from coverage of these amendments or any part of the rule, we believe additional such changes would be impracticable. These amendments in effect except a large number of smaller entities from the scope of the rule, by revising the definition of financial intermediary. We have designed these amendments to reduce the cost and compliance burden on small entities to the greatest extent practicable while still maintaining the investor protections of the rule as adopted.

Small entities are as vulnerable to the problems uncovered in recent enforcement actions and settlements as large entities. Therefore, shareholders of small entities are equally in need of protection from short-term traders. We believe that the rule and these amendments will enable funds to more effectively discourage short-term trading of all fund shares, including those held in omnibus accounts. Further excepting small entities from coverage of the rule or any part of the rule could compromise the effectiveness of the rule. We anticipate that the amendments will alleviate much of the burden imposed by the rule on small entities, and result in a more cost effective system for discouraging short-term trading for all entities. Alternatives that we considered but are not adopting included, among others, (i) fully exempting all small entities from complying with the information-sharing aspect of the rule, (ii) not requiring that the information-sharing agreement obligate first-tier intermediaries to assist in providing information from indirect intermediaries to funds, and (iii) extending the compliance date for small entities.

VIII. Statutory Authority

The Commission is amending rule 22c-2 pursuant to the authority set forth in sections 6(c), 22(c), and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), 80a-22(c) and 80a-37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amended Rule

■ For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

■ 2. Section 270.22c-2 is revised to read as follows:

§ 270.22c-2 Redemption fees for redeemable securities.

(a) *Redemption fee.* It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:

(1) *Board determination.* The fund's board of directors, including a majority of directors who are not interested persons of the fund, must either:

(i) Approve a redemption fee, in an amount (but no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund, the proceeds of which fee will be retained by the fund; or

(ii) Determine that imposition of a redemption fee is either not necessary or not appropriate.

(2) *Shareholder information.* With respect to each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency, the fund (or on the fund's behalf, the principal underwriter or transfer agent) must either:

(i) Enter into a shareholder information agreement with the financial intermediary (or its agent); or

(ii) Prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund. For purposes of this

¹⁴⁵ Rule 22c-2(a)(3).

paragraph, "purchasing" does not include the automatic reinvestment of dividends.

(3) *Recordkeeping.* The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

(b) *Excepted funds.* The requirements of paragraph (a) of this section do not apply to the following funds, unless they elect to impose a redemption fee pursuant to paragraph (a)(1) of this section:

(1) Money market funds;

(2) Any fund that issues securities that are listed on a national securities exchange; and

(3) Any fund that affirmatively permits short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

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

(1) *Financial intermediary* means:

(i) Any broker, dealer, bank, or other person that holds securities issued by the fund, in nominee name;

(ii) A unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)); and

(iii) In the case of a participant-directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any person that maintains the plan's participant records.

(iv) *Financial intermediary* does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund.

(2) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act (15 U.S.C. 80a-8), and includes a separate series of such an investment company.

(3) *Money market fund* means an open-end management investment company that is registered under the Act and is regulated as a money market fund under § 270.2a-7.

(4) *Shareholder* includes a beneficial owner of securities held in nominee name, a participant in a participant-directed employee benefit plan, and a holder of interests in a fund or unit investment trust that has invested in the

fund in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a fund investing pursuant to section 12(d)(1)(G) of the Act (15 U.S.C. 80a-12(d)(1)(G)), a trust established pursuant to section 529 of the Internal Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) *Shareholder information agreement* means a written agreement under which a financial intermediary agrees to:

(i) Provide, promptly upon request by a fund, the Taxpayer Identification Number (or in the case of non U.S. shareholders, if the Taxpayer Identification Number is unavailable, the International Taxpayer Identification Number or other government issued identifier) of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary's account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; and

(iii) Use best efforts to determine, promptly upon request of the fund, whether any specific person about whom it has received the identification and transaction information set forth in paragraph (c)(5)(i) of this section, is itself a financial intermediary ("indirect intermediary") and, upon further request by the fund:

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an indirect intermediary; or

(B) Restrict or prohibit the indirect intermediary from purchasing, in nominee name on behalf of other persons, securities issued by the fund.

Dated: September 27, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6-16273 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM06-24-000; Order No. 683]

Critical Energy Infrastructure Information

Issued September 21, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule amending its regulations for gaining access to Critical Energy Infrastructure Information (CEII). The definition of CEII is being clarified to exclude information that the Commission never intended to be deemed as containing critical infrastructure information. In addition, procedural changes are being made based on over three years experience processing CEII requests. These changes simplify the procedures for obtaining access to CEII without increasing vulnerability of the energy infrastructure.

DATES: *Effective Date:* The rule will become effective November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Teresina A. Stasko, Office of the General Counsel, GC-13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202-502-8317.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. It has been over three years since the Commission issued its final order on Critical Energy Infrastructure Information (CEII). See Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); *order on reh'g*, Order No. 630-A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). Since the issuance of Order No. 630, the Commission has continually monitored and evaluated the effectiveness of the CEII process. The most recent review indicates that changes are needed to assure the rules work in the manner intended.

2. As explained below, the Commission makes strictly procedural changes in this instant and final rule. In a notice of proposed rulemaking in Docket No. RM06-23-000, which is being issued concurrently with this final

rule, the Commission proposes other changes, which require notice and comment. *See* 5 U.S.C. 553 (2000).

3. In this final rule the Commission clarifies and limits the definition of CEII to minimize the amount of information which qualifies as CEII, and makes the following changes to its regulations: (1) The definition of CEII is clarified; and (2) requesters are required to submit executed non-disclosure agreements (NDA) with their requests. In addition, the Commission is providing notice that, for CEII requests, the notice and opportunity to comment on a request will be combined with the notice of release. The Commission further takes this opportunity to reiterate its requirement that submitters segregate CEII from other information and file as CEII only information which truly warrants being kept from public access. Accordingly, this rule is being issued as an instant and final rule because it only concerns procedural matters. *See* 5 U.S.C. 553(b)(3)(A) (2000).

4. In a notice of proposed rulemaking in Docket No. RM06-23-000 issued concurrently with this final rule, the Commission seeks comments on, among other things: (1) Revisions to its regulations regarding CEII requests; (2) the limited portions of various forms and reports the Commission now defines as containing CEII; and (3) its proposal to abolish the non-Internet public (NIP) designation.

Background

5. The Commission began its efforts with respect to CEII shortly after the attacks of September 11, 2001. *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). The Commission's initial step was to remove from its public files and Internet page documents such as oversized maps that were likely to contain detailed specifications of facilities licensed or certified by the Commission, directing the public to request such information pursuant to the Freedom of Information Act (FOIA) process detailed in 5 U.S.C. 552 (2000) and in the Commission's regulations at 18 CFR 388.108 (2001). In September 2002, the Commission issued a notice of proposed rulemaking regarding CEII, which proposed an expanded definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. *See* Notice of Rulemaking and Revised Statement of Policy, 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued its final rule on CEII on February 21, 2003, defining CEII to

include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. *See* Order No. 630, 68 FR 9857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630-A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. *See* Order No. 630-A, 68 FR 46456, FERC Stats. & Regs. ¶ 31,147. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of NIP information, a term first described in Order No. 630, and added a commitment to review the effectiveness of the new process after six months. Also on July 23, 2003, the Commission issued Order No. 643, which revised the Commission's regulations to require companies to make certain information available directly to the public under certain circumstances. These revisions were necessary to conform the regulations to Order No. 630. *See* Order No. 643, 68 FR 52089, FERC Stats. & Regs. ¶ 31,149 (2003). In Order No. 662, the Commission modified its CEII regulations to ease the burden on agents of owners or operators of energy facilities that are seeking CEII relating to the owner/operator's own facility. The rule also simplified federal agencies' access to CEII. *See* Order No. 662, 70 FR 37031, FERC Stats. & Regs. ¶ 31,189 (2005).

Summary and Discussion

I. Regulatory Changes

A. Clarification of What Constitutes CEII

6. The CEII regulations were designed to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner. In other words, CEII reflects a delicate balance between the due process rights of interested persons to participate fully in Commission proceedings and the Commission's responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. Although CEII was intended only to protect detailed information that would aid a terrorist attack, many submitters overutilize the designation. Therefore, the Commission is specifically clarifying and refining the definition to better inform companies of what constitutes CEII to limit the amount of material which constitutes CEII. CEII is clarified as specific engineering, vulnerability, or detailed design information about proposed or existing

critical infrastructure that: (1) Relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure. The particular clarifications consist of adding the words "specific engineering, vulnerability, or detailed design" at the beginning of § 388.113(c)(1) and adding the words "details about" at the beginning of § 388.113(c)(1)(i).

7. The Commission further clarifies that narratives such as the descriptions of facilities and processes are generally not CEII unless they describe specific engineering and design details of critical infrastructure.

B. Requirement To Provide an Executed Non-Disclosure Agreement With a CEII Request

8. Requesters will now be required to submit an executed non-disclosure agreement with their signed requests. As CEII contains information that may be used to harm the critical infrastructure of the United States, it is only fitting to require that a requester execute an agreement not to disclose the information, and provide that agreement with his or her request. Often processing of a request is delayed because the requester does not promptly submit an executed non-disclosure agreement upon request. Posted on the Commission's Web site at <http://www.ferc.gov> are the various non-disclosure agreements that pertain to various types of requesters. For example, a member of the media should submit the non-disclosure agreement entitled Media NDA. If a requester does not know the appropriate non-disclosure agreement to submit with his or her request, he or she may contact the Office of External Affairs at (202) 502-8004. Including an executed non-disclosure agreement with an executed request will help to expedite processing of requests. A CEII request will not be accepted until the Commission receives an executed NDA.

II. Reiteration of Current Regulatory Standards

A. Notice and Opportunity To Comment and Notice Prior To Release

9. Section 388.112(d) of the Commission's regulations provides that, among other things, when a CEII requester seeks a document for which CEII status has been claimed, or when

the Commission itself is considering releasing such a document, the Commission will provide the submitter of the document notice and an opportunity to comment. 18 CFR 388.112(d) (2006). Section 388.112(e) of the Commission's regulations provides that, among other things, the Commission or an appropriate official will give notice to the submitter prior to release of a document for which CEII status has been claimed. 18 CFR 388.112(e) (2006). In processing CEII requests, it has been the practice of the Commission to issue these notifications separately. Henceforth, the Commission will provide the notice and opportunity to comment in the same document as the notice of release.

10. The Commission acknowledges that the notice and comment process affords the Commission the opportunity to get information on the requester from the submitter, who may be most familiar with the requester, and the opportunity to get the submitter's input into potential harm from release of the information. However, experience has shown that only in a limited number of requests has the submitter provided information about the requester. In many instances, the submitter provides a boilerplate response that does not address release of information to a particular requester. In an effort to increase the efficiency of processing CEII requests, the Commission will combine the notice of release with an opportunity to comment. Submitters may still provide comments or input upon notice of release. The release would proceed as scheduled unless the CEII Coordinator or her designee receives opposition to release, in which case the CEII Coordinator or his or her designee will issue a revised notice. The vast majority of submitters support release with a properly executed NDA. Only in extremely rare instances would a submitter's comments be the determinative factor in not releasing CEII. These rare instances should not impede an efficient CEII process. In the event a submitter provides comments opposing release, the information would not be released until the submitter receives a revised notice of release.

B. Requirement To Segregate and Justify CEII

11. The CEII process was not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission reiterates its requirement that submitters

segregate public information from CEII and file as CEII only information which truly warrants being kept from ready public access.

12. To this end, the Commission emphasizes that the Commission's regulation at 18 CFR 388.112(b)(1) requires that submitters provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.

C. Enforcement of Proper Designation and Justification

13. The Commission retains its concern for filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of an application where information is mislabeled as CEII or where a legal justification is not provided. Further, concurrent with this order, the Commission is issuing a notice of proposed rulemaking in Docket No. RM06-23-000 seeking comments on its proposal to, among other things, clarify what specific portions of various forms and reports submitted to the Commission contain CEII.

Information Collection Statement

14. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. See 5 CFR 1320.12 (2006). This final rule does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

Environmental Analysis

15. 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. See Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. See 18 CFR 380.4(a)(2)(ii) (2006). This rule is procedural in nature and therefore falls under this exception;

consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

16. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. 5 U.S.C. 601-612 (2000). The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule will not have such an impact on small entities.

Document Availability

17. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through 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.

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

19. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

Effective Date

20. These regulations are effective November 2, 2006. The provisions of 5 U.S.C. 801 (2000) regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends Part 388, Chapter I,

Title 18, Code of Federal Regulations, as follows:

PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 2. In § 388.113, paragraphs (c)(1), (d)(3)(i), and (d)(3)(ii) are revised to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

* * * * *

(c) * * *

(1) *Critical energy infrastructure* information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

(i) Relates details about the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the general location of the critical infrastructure.

* * * * *

(d) * * *

(3) * * *

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: Requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. A requester must also file an executed non-disclosure agreement. Requesters are also requested to include their social security number for identification purposes.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII

Coordinator will determine what conditions, if any, to place on release of the information. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in § 385.713 of this chapter. Copies of requests for rehearing of the CEII Coordinator's decision must be served on the CEII Coordinator and the Associate General Counsel for General Law.

* * * * *

[FR Doc. E6–15820 Filed 10–2–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9276]

RIN 1545–BD96

Flat Rate Supplemental Wage Withholding; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9276), that were published in the **Federal Register** on Tuesday, July 25, 2006 (71 FR 142). These regulations apply to all employers and others making supplemental wage payments to employees.

DATES: This correction is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: A.G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9276) that are the subject of this correction are under sections 3401 and 3402 of the Internal Revenue Code.

Need for Correction

As published, TD 9276 contains language that is repetitious.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Correction of Publication

■ Accordingly, 26 CFR part 31 is corrected by making the following correcting amendment:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 31.3402(g)–1 [Corrected]

■ **Par. 2.** Section 31.3402(g)–1 is amended by removing the last sentence from paragraph (a)(8), *Example 4* (i).

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–16237 Filed 10–2–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9276]

RIN 1545–BD96

Flat Rate Supplemental Wage Withholding; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9276), that were published in the **Federal Register** on Tuesday, July 25, 2006 (71 FR 142). These regulations apply to all employers and others making supplemental wage payments to employees.

DATES: This correction is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9276) that is the subject of this correction are under sections 3401 and 3402 of the Internal Revenue Code.

Need for Correction

As published, TD 9276 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9276), that were the subject of FR Doc. E6–11764, is corrected as follows:

On page 42051, column 2, in the preamble under the paragraph heading "Special Rules for Determining Applicability of Mandatory Flat Rate Withholding", lines 2 and 3 from the top of the column, the language, "the final regulations and the revenue procedure provide employers with a" is corrected to read "the final regulations provide employers with a".

Cynthia E. Grigsby,

*Senior Federal Register Liaison Officer,
Publications and Regulations Branch, Legal
Processing Division, Associate Chief Counsel
(Procedures and Administration).*

[FR Doc. E6-16239 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 015-2006]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends part 16 of title 28 of the Code of Federal Regulations to reflect the applicability of Privacy Act Systems of Records Notices and any associated exemptions to the newly established National Security Division (NSD) at the Department of Justice. The National Security Division was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005, by consolidating the resources of the Office of Intelligence Policy and Review (OIPR) and the Criminal Division's Counterterrorism and Counterespionage Sections. Therefore, Privacy Act Systems of Records Notices and any associated exemptions that applied to OIPR and the Criminal Division's Counterterrorism and Counterespionage Sections, are adopted by and applicable to the NSD until modified, superseded, or revoked in accordance with law.

DATES: *Effective Date:* This rule is effective October 3, 2006

FOR FURTHER INFORMATION CONTACT: Mary Cahill, Justice Management Division, U.S. Department of Justice, 1331 Pennsylvania Ave., NW., Suite 1400, Washington, DC 20530; Telephone: (202) 307-1823.

SUPPLEMENTARY INFORMATION: Because OIPR is transferring in its entirety to NSD, all the Privacy Act Systems of Records Notices and exemptions that applied to OIPR are adopted by and now apply to NSD. As a result of the transfer of the Criminal Division's

Sections to NSD, the following Privacy Act System of Records Notice and associated exemptions are adopted by and apply to NSD: "Central Criminal Division Index File and Associated Records, JUSTICE/CRM-001" (to the extent that subject matters therein are transferred to the jurisdiction of NSD), 63 FR 8659 (February 20, 1998), as amended in part by 66 FR 17200 (March 29, 2001), (this notice and associated exemptions continue to apply to the Criminal Division as well). The notices for the following nonexempt Systems of Records are also adopted by and apply to NSD: "Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended, JUSTICE/CRM-017" 53 FR 16794 (May 11, 1988), and "Registration Files of Individuals Who Have Knowledge of or Have Received Instruction or Assignment in Espionage, Counterespionage, or Sabotage Service or Tactics of a Foreign Government or of a Foreign Political Party, JUSTICE/CRM-018" 52 FR 47197 (December 11, 1987).

No substantive changes are being made to the Privacy Act Systems of Records Notices and associated exemptions at this time, and the adoption by and continued applicability of the notices and exemptions to NSD will not add or remove any substantive rights or obligations of the public.

Administrative Procedure Act—5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866 Regulatory Planning and

Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described by Executive Order 12866 section 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organizations and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. section 801 does not apply.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, title 28 of the Code of Federal Regulations is amended as follows:

Approved: September 21, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law.

Dated: September 26, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6-16323 Filed 10-2-06; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD11-06-010]

RIN 1625-AA08

Special Local Regulations for Marine Events; San Francisco Bay Navy Fleet Week Parade of Ships and Air Show Demonstration, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the special local regulations (SLR's) in the navigable waters of San Francisco Bay for the annual U.S. Navy and City of San Francisco sponsored Fleet Week Parade of Navy Ships and Air Show Demonstration to be held October 5 thru October 8, 2006. This SLR will be used to keep spectator vessels out of the path of parading Navy ships and away from the area directly below participating aircraft during the air show in order to ensure the safety of event participants and spectators.

DATES: The regulations at 33 CFR 100.1105(b)(1), Regulated Area "Alpha" for Navy Parade of Ships will be enforced from 11 a.m. to 1 p.m. on October 7, 2006, while the regulations at 33 CFR 100.1105(b)(2), Regulated Area "Bravo" for the Fleet Week Air Show Demonstration will be enforced from 9 a.m. to 4 p.m. on October 5, 2006, 12:30 a.m. to 4:30 p.m. on October 6 and 7, and 1:30 p.m. to 4:30 p.m. on October 8, 2006.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric Ramos, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco, at (415) 556-2950 Ext. 143 or the Sector San Francisco Command Center, at (415) 399-3547.

SUPPLEMENTARY INFORMATION: On October 1, 1993, the Coast Guard published a final rule (58 FR 51242) modifying the regulations in 33 CFR

100.1105, that establish regulated areas to ensure the safe execution of the San Francisco Bay Navy Fleet Week Parade of Ships and Air Show Demonstration. The U. S. Navy and City of San Francisco are sponsoring the Annual Fleet Week Parade of Navy Ships and Air Show Demonstration to be held October 5 thru October 8, 2006.

Due to the security concerns associated with the participating naval vessels and hazards associated with the air show demonstration, 33 CFR 100.1105 is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. Under the provisions of 33 CFR 100.1105, a vessel may not enter Regulated area "Alpha" or "Bravo", unless it receives permission from the Coast Guard Patrol Commander. Additionally, no person or vessel may enter or remain within 500 yards ahead of the lead Navy parade vessel, within 200 yards astern of the last parade vessel, or within 200 yards on either side of any parade vessel. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing the SLR.

Because this SLR will be in effect for a limited period, it should not result in a significant disruption of maritime traffic. Additionally, the maritime community will be provided advance notification of these events via the Local Notice to Mariners.

Dated: September 8, 2006.

J.A. Breckenridge,

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

[FR Doc. E6-16312 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-06-075]

RIN 1625-AA08

Special Local Regulations for Marine Events; Back River, Poquoson, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the "Poquoson Seafood Festival

Workboat Races", a marine event to be held October 15, 2006 on the waters of the Back River, Poquoson, Virginia. 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 Back River during the event.

DATES: This rule is effective from 12 p.m. to 5 p.m. on October 15, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05-06-075) 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, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 1, 2006, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Back River, Poquoson, VA in the **Federal Register** (71 FR 43400). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, area newspapers and local radio stations.

Background and Purpose

On October 15, 2006, the City of Poquoson will sponsor "Poquoson Seafood Festival Workboat Races" on the Back River, immediately adjacent and south of Messick Point. The event will consist of approximately 60 traditional Chesapeake Bay deadrise workboats racing along a marked strait line race course in heats of 2 to 4 boats for a distance of approximately 600 yards. 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 Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Back River, Poquoson, Virginia.

Regulatory Evaluation

This temporary 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. Although this regulation will prevent traffic from transiting a portion of the Back 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 the Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, 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 temporary 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 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 Back River during the event.

Although this regulation prevents traffic from transiting a portion of the Back River during the event, this temporary rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This 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.

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 this 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.

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 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.ID 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)(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.

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—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–T05–075 to read as follows:

§ 100.35–T05–075 Back River, Poquoson, VA.

(a) *Definitions:* The following definitions apply to this section; (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 Hampton Roads.

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

(3) *Participant* includes all vessels participating in the Poquoson Seafood Festival Workboat races under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(4) *Regulated area* includes the waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ North, bounded on the south by a line drawn along latitude 37°06′15″ North, bounded on the east by a line drawn along longitude 076°18′52″ West and bounded on the west by a line drawn along longitude 076°19′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 be enforced from 12 p.m. to 5 p.m. on October 15, 2006.

Dated: September 18, 2006.

Larry L. Hereth,

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

[FR Doc. E6–16314 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–06–174]

RIN 1625–AA08

Special Local Regulation; Sunfish World Championship Regatta, Charleston Harbor, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Sunfish World Championship Regatta located in Charleston Harbor, South Carolina. The event will run from October 1, 2006 through October 6, 2006. This Regulation is necessary to ensure safety and security during this international event, while also reducing the impact to commercial traffic in Charleston Harbor. **DATES:** This rule is effective from 8 a.m. on October 1, 2006 until 6 p.m. on October 6, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD 07–06–174 and are available for inspection or copying at Coast Guard Sector Charleston, Prevention Department (WWM) between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Hunter G. Crider, U.S. Coast Guard Sector Charleston, South Carolina, at (843) 724–7647.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM would be impracticable and contrary to the public interest since the specific details of this event, including the race course location, and dates were not provided to the Coast Guard with sufficient time to publish an NPRM and receive public comments. This regulation is necessary to ensure the safety and security of participants and

vessel traffic during this event. The Coast Guard will provide additional notification of this event to the public through broadcast notice to mariners and a Coast Guard Patrol Commander will be on-scene to provide notice to spectators and other vessels in the area.

For the same reasons mentioned above, and 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**.

Background and Purpose

The Sunfish World Championship Regatta is a sailing race that will consist of one hundred Sunfish sailboats of identical design and build, each approximately 16 feet in length, participating in race events over several days. In order to ensure safety during this event, the Coast Guard has defined a regulated area within Charleston Harbor where the competition will take place and to ensure the safety and security of the competitors, the Coast Guard is establishing a “no entry” zone around the fleet of participating vessels. When by necessity a course is set across the South Channel, which includes the Atlantic Intracoastal Waterway, the “no entry” zone will have the effect of temporarily closing the South Channel to non-participant vessel traffic in order to allow the fleet to pass safely.

Discussion of Rule

The regulated area contains Charleston Harbor’s “Middle Ground”, Anchorage area “Alpha” and is bound by the following GPS points connected to each other in a clockwise direction:

- A. 32°46.3' N 079°53.6' W
- B. 32°47.1' N 079°52.5' W
- C. 32°43.1' N 079°52.5' W
- D. 32°45.3' N 079°55.1' W
- E. 32°46.5' N 079°55.4' W
- F. 32°46.6' N 079°54.9' W
- G. 32°46.3' N 079°54.6' W and back to point “A”.

While the regulation is enforced, non-participating vessels will be prohibited from anchoring or mooring within the regulated area unless authorized by the Captain of the Port (COTP), Charleston, South Carolina or the Coast Guard Patrol Commander. During the designated race times, the sailing committee will establish and mark one or more race courses within the boundaries of the regulated area. Each course will be designed to have races that last approximately 2 hours in duration. There will be no more than 3 races held on any given day. All races will occur between the hours of 8 a.m. and 6 p.m. local time. Given the intended course designs and skill of the

competitors, it is expected that at any given time, the participants will occupy only a portion of the regulated area. A “no entry” zone will follow the fleet around courses set within the regulated area. The “no entry” zone extends 200 yards ahead of the lead vessel and 50 yards from all participants.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 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 DHS (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. This rule is only effective for six hours on each day of the regatta, and will expire thereafter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 through the regulated area of Charleston Harbor during the hours of 8 a.m. to 6 p.m. on each day from October 1, 2006 through October 6, 2006. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will only be enforced a total of 10 hours per day. Further, the courses will be set within the regulated area to minimize the impact on commercial traffic and recreational vessel traffic. Lastly, it is anticipated that the “no entry” zone will only overlay the South Channel less than 6 times per day, at intervals of less than 30 minutes each time.

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 will affect your small business, organization, or government jurisdiction and you have questions concerning its revisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern 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.ID, 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. 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 § 100.35T–07–174 to read as follows:

§ 100.35T–07–174 Special Local Regulation; Sunfish World Championship Regatta, Charleston, South Carolina

(a) Regulated Area—The regulated area is bounded by an imaginary line connecting the following coordinates in order as described below:

- A. 32°46.3' N 079°53.6' W
- B. 32°47.1' N 079°52.5' W
- C. 32°43.1' N 079°52.5' W
- D. 32°45.3' N 079°55.1' W
- E. 32°46.5' N 079°55.4' W
- F. 32°46.6' N 079°54.9' W
- G. 32°46.3' N 079°54.6' W and back to point "A".

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard that has been designated as such by the Captain of the Port, Charleston, South Carolina.

(c) *Regulations.*

(1) No person or vessel shall be anchored or moored within the

regulated area unless authorized by the Coast Guard Captain of the Port of Charleston or Coast Guard Patrol Commander.

(2) Spectators and other non-participant vessels may enter and transit through the regulated area but are prohibited from entering into a mobile buffer zone extending 50 yards in all directions around all participants and extending 200 yards ahead of the lead boat during races.

(3) Spectators and non-participant vessels are prohibited from anchoring, mooring or otherwise stopping their vessel within the confines of any Navigational channel unless authorized or directed by the Coast Guard Patrol Commander.

(d) *Enforcement Period.* This rule will be enforced from 8 a.m. to 6 p.m. daily from October 1, 2006 through October 6, 2006.

(e) *Effective Dates.* This rule is effective from October 1 to October 6, 2006.

Dated: September 21, 2006.

J.A. Watson,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. E6–16334 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–204]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway Mile 1072.2, Hollywood, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation governing the operation of the Hollywood Boulevard Drawbridge across the Atlantic Intracoastal Waterway mile 1072.2, Hollywood, Broward County, Florida, due to repair work on the bridge. This rule will provide for worker and mariner safety during the repairs to this drawbridge. The drawbridge will be on single-leaf operations during most of the repair period and several waterway closures will be needed.

DATES: This rule is effective from October 3, 2006 to July 27, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–06–204 and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE 1st Ave., Ste 432 Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, (305) 415–6744.

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 is contrary to the public interest because the rule is needed to provide for worker and marine safety during repairs to the drawbridge. Also, this temporary final rule provides provisions for vessels to transit through the area except during short waterway closure periods.

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 **Federal Register** publication. This rule provides for scheduled drawbridge openings and provisions for vessels to transit through the drawbridge except during short waterway closure periods and provides for the safety of the public and mariners during the scheduled repair period.

Background and Purpose

The Florida Department of Transportation notified the Coast Guard on February 4, 2006, that the current operation of the Hollywood Boulevard Drawbridge, Intracoastal Waterway mile 1072.2, Hollywood, Broward County, Florida, would need to be changed to allow for extensive repairs. However, the construction repair contractor did not provide the repair schedule dates to the Coast Guard until August 4, 2006, at which time repairs to the bridge had already begun. Therefore, there was not enough time to publish an NPRM.

The drawbridge will be required to only open a single-leaf twice an hour. A double-leaf opening will be available, except on some dates and times. The waterway will be closed for short periods to allow for the reconstruction of portions of the drawbridge. Exact times and dates of waterway closures and drawbridge restrictions will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the drawbridge will be opened as soon as possible.

Discussion of Rule

The draw of the Hollywood Boulevard drawbridge shall open a single-leaf on the hour and half-hour. Double-leaf operations shall be available during certain periods. Waterway closures shall be authorized by the Captain of the Port Miami as needed and will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will allow for bridge openings during the repairs to this drawbridge and all closure times will be published with adequate time for mariners to plan 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, because the regulations provide for drawbridge openings, short closure periods and will provide for the reasonable needs of navigation.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Atlantic Intracoastal Waterway under the Hollywood Boulevard drawbridge from October 3, 2006 to July 27, 2007.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(3), of the Instruction, and "Environmental Analysis Check List" and "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From 7 a.m. on October 3, 2006 to 7 p.m. on July 27, 2007, Sec. 117.261(bb)(11) is suspended and new paragraph (bb)(13), is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(bb)(13) Hollywood Beach Boulevard (SR 820) bridge, mile 1072.2 at Hollywood. The draw shall open a single-leaf on the hour and half-hour. A double-leaf shall be available with two hours advance notice to the bridge tender, except during certain time periods to be published in the Local Notice to Mariners. Waterway closures will be published in the Local Notice to Mariners as needed.

* * * * *

Dated: September 21, 2006.

J.A. Watson,

*Captain, U.S. Coast Guard, Commander,
Seventh Coast Guard District Acting.*

[FR Doc. E6–16275 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–121]

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the P.J. McArdle Bridge across the Chelsea River at mile 0.3, between Chelsea and East Boston, Massachusetts. Under this temporary deviation, the bridge may remain in the closed position from 6 a.m. to 6 p.m., on October 10, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 6 a.m. to 6 p.m. on October 10, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The P.J. McArdle Bridge, across the Chelsea River at mile 0.3, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.593.

The owner of the bridge, the City of Boston, requested a temporary deviation to facilitate scheduled bridge maintenance, replacement of gear oil. The bridge will not be able to open while the bridge maintenance is underway.

Under this temporary deviation, the P.J. McArdle Bridge need not open for the passage of vessel traffic between 6 a.m. and 6 p.m. on October 10, 2006.

In accordance with 33 CFR 117.35(c), this work will be performed with all due

speed in order to return the bridge to normal operation as soon as possible.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 25, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6-16316 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-06-120]

Drawbridge Operation Regulations; Kennebec River, Bath and Woolwich, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Carlton Bridge across the Kennebec River at mile 14.0, between Bath and Woolwich, Maine. Under this temporary deviation, the bridge may remain in the closed position from 7 a.m. on October 16, 2006 through 8 p.m., on October 17, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from October 16, 2006 through October 17, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

SUPPLEMENTARY INFORMATION: The Carlton Bridge, across the Kennebec River at mile 14.0, between Bath and Woolwich, Maine, has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.525.

The owner of the bridge, Maine Department of Transportation, requested a temporary deviation to facilitate scheduled bridge maintenance, replacement of the bridge lift cables. The bridge will not be able to open while the bridge maintenance is underway.

Under this temporary deviation, the Carlton Bridge need not open for the passage of vessel traffic from 7 a.m. on October 16, 2006 through 8 p.m. on October 17, 2006.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 25, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6-16318 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 412, 413, 414, 424, 485, 489, and 505

[CMS-1488-CN]

RIN 0938-AO12

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 18, 2006 entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates."

DATES: *Effective Date:* These corrections are effective on October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786-4548.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 06-6692 of August 18, 2006 (71 FR 47870), the final rule entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates" (hereinafter referred to as the FY 2007 IPPS final rule) there were several minor typographical and technical errors that we are identifying and correcting in section III. of this notice. The provisions in this correction notice are effective as if they had been included in the published FY 2007 IPPS final rule. Accordingly, the corrections are effective October 1, 2006.

II. Summary of the Corrections to the FY 2007 IPPS Final Rule

On page 47944, in our preamble discussion regarding Carotid Artery Stents, we erroneously stated that we were creating a new DRG 583, when, in fact, we were creating a new DRG 577. Therefore, in section III. A. of this notice, we are correcting that error. This technical correction merely corrects the description of the new DRG in the preamble text and does not affect the GROUPER or the relative weight for the new DRG.

On page 48137, we made several errors in the first amendatory statement for § 412.25. First, we misstated that we were amending the introductory text of

§ 412.25(e) when instead we were amending § 412.25(e)(1). Second, we inadvertently misquoted a portion of § 412.25(e)(1). Specifically, we stated that we were removing the phrase “paragraph (e)(2) and (e)(4)” in the existing regulations. However, the existing regulation states “paragraphs (e)(2) through (e)(4)”. Third, we made a typographical error in describing the phrase that was replacing the cross-reference described above. Specifically, we stated that “paragraph (e)(2) and (e)(5)” was replacing “paragraph (e)(2) and (e)(4).” (We note that our final regulations make paragraphs (e)(2) through (e)(5), not just paragraphs (e)(2) and (e)(5), applicable to satellite facilities.) Therefore, in section III. B. of this notice, we are correcting the aforementioned errors by revising the first amendatory statement of § 412.25 to indicate that in paragraph (e)(1) we are removing the cross-reference to “paragraphs (e)(2) through (e)(4)” and adding the cross-reference “paragraphs (e)(2) through (e)(5)” in its place.

On pages 48191, 48201, and 48202, in Table 5—List of Diagnosis-Related Groups (DRGS), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS), we inadvertently listed the incorrect DRG title for several DRGs and the incorrect major diagnosis category (MDC) for DRG 566 and DRG 572. Therefore, we are correcting these errors in section III. C. of this notice.

III. Correction of Errors

In FR Doc. 06–6692 of August 18, 2006 (71 FR 47870), make the following corrections:

A. Corrections to Errors in the Preamble

On page 47944, first column, second full paragraph, lines 1 and 5, the figure “583” is corrected to read “577”.

B. Corrections to Errors in the Regulations Text

§ 412.25 [Corrected]

On page 48137, first column, lines 10 through 14, in the first amendatory

statement for § 412.25, the sentence “In paragraph (e) introductory text, remove the cross-reference ‘paragraph (e)(2) and (e)(4)’ and add the cross-reference ‘paragraph (e)(2) and (e)(5)’ in its place.” is corrected to read, “In paragraph (e)(1), remove the cross-reference ‘paragraphs (e)(2) through (e)(4)’ and add the cross-reference ‘paragraphs (e)(2) through (e)(5)’ in its place.”

C. Corrections to Errors in the Addendum

Note: The addendum does not appear in the Code of Federal Regulations.

1. On pages 48191, 48201, and 48202 in Table 5—List of Diagnosis-Related Groups (DRGS), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS) the following DRG titles (column 6) are corrected to read as follows:

DRG	DRG title
DRG 303	Kidney and Ureter Procedures for Neoplasm.
DRG 304	Kidney and Ureter Procedures for Non-Neoplasm With CC.
DRG 305	Kidney and Ureter Procedures for Non-Neoplasm Without CC.
DRG 543	Craniotomy With Major Device Implant or Acute Complex CNS Principal Diagnosis.
DRG 568	Stomach, Esophageal & Duodenal Proc Age >17 W CC W/O Major GI DX.

2. On page 48202, in Table 5—List of Diagnosis-Related Groups (DRGS), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS),—

a. Row 9, DRG 566, the MDC (column 4) “06” is corrected to read “04”.

b. Row 15, DRG 572, the MDC (column 4) “08” is corrected to read “06”.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**.

This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

Therefore, we are waiving proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This notice merely corrects typographical and technical errors in the preamble, regulations text, and addendum of the FY 2007 IPPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this notice is intended to ensure that the FY 2007 IPPS final rule accurately reflects the policies adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule or delaying the effective date of these changes is unnecessary and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2006.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 06–8429 Filed 9–29–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 092506B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to allow for a reasonable opportunity to

harvest the General category October through January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for October to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*)

and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29, 1999; 64 FR 29090), and implementing regulations at

§ 635.27. A three-fish General category retention limit was set for the first subperiod (June through August) due to the large amount of available quota and the low catch rate at the opening of the season. The three-fish General category retention limit was extended through the second subperiod (September) as catch rates remained low to provide enhanced fishing opportunities while minimizing the risk of exceeding available quota (71 FR 51529, August 30, 2006).

Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	September 1, 2006, through September 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	October 1, 2006, through October 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	November 1, 2006, through January 31, 2007, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was to remain in effect through August 31, 2006, inclusive, but on August 30, 2006, was extended through September (71 FR 51529). From October 1, 2006, through January 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through September time-period subquota allocations for the 2006 fishing year totaled approximately 1,038 metric tons (mt). As of September 15, 2006, 75.8 mt have been landed in the

General category and catch rates are less than 1.0 mt per day. If catch rates remain at current levels, approximately 11 mt would be landed during the remainder of September. This projection would bring the June through September time-period subquota landings to approximately 88.4 mt, resulting in an underharvest of approximately 951 mt. This carryover combined with the October through January time-period subquota allocation of 115.3 mt would allow for 1,066 mt to be harvested during the months of October through January. In combination with the subquota rollover from the June through August time-period, the expected rollover from September time-period subquota allocation, and the October through January subquota allocation, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on October 1, 2006, NMFS anticipates the full October through January time-period subquota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the

1999 FMP and may contribute to excessive carry-overs to subsequent fishing years. In the past, however the fishery has had the capability of increasing landings rates dramatically in the latter Fall and Winter months, particularly off southern states. If the fishery was to perform at these past levels with very high landings rates (although not witnessed during the winter of 2005/2006) it would alleviate concern of excessive roll-overs from one fishing year to the next but raises the possibility of a curtailed season without full extension of fishing opportunities through January.

Therefore, based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from October 1, 2006, through October 31, 2006, inclusive, is warranted. Thus, the General category daily retention limit of three large medium or giant BFT per vessel per day/trip (see Table 1) is extended through October 31, 2006. From November 1, 2006, through January 31, 2007, inclusive, the General category default daily BFT retention limit will be one large medium or giant

BFT per vessel per day/trip. NMFS anticipates that with a combination of the default retention limit starting on November 1, 2006, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend into the winter months and allow for a southern Atlantic fishery to take place on an order of magnitude of prior years with minimal risk of landings exceeding available quota. However, to reduce the risks of excessive landings rates throughout the winter, NMFS has determined it necessary to only extend the three BFT daily retention limit for the one month of October and will re-examine the need to further extend the increased bag limit prior to November 1 based on landings rates and other fishery information. In addition, one of the preferred alternatives in the final Consolidated Highly Migratory Species FMP (July 14, 2006, 71 FR 40095), would formally allocate General category sub-quota to the December and January individual time-frames to provide for a late-season south Atlantic fishery.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the 1999 FMP.

Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications and inseason management measures for the General category received during the 2006 BFT quota specifications rulemaking process, and analyzing the available quota for the 2006 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In

addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access the internet at www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS has recently become aware of increased availability of large medium and giant BFT off southern New England fishing grounds from fishing reports and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates for a late season, southern New England fishery if participants are authorized to harvest three large medium or giant BFT per day. Although landings to date have been low (i.e. less than one mt/day) there is the potential for increased availability of BFT off the southern New England coast during the Fall to allow for an increase in fishery landing rates. The regulations implementing the 1999 FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Adjustment of retention limits is also necessary to avoid excessive quota rollovers to subsequent General category time-period subquotas. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are still available on southern New England fishing grounds. Analysis of available data shows that the General category BFT retention limit may be increased for the Atlantic tuna General and HMS Charter/Headboat permit holders with minimal risks of exceeding the International Commission for the Conservation of Atlantic Tunas allocated quota.

Delays in increasing the retention limits would be contrary to the public interest. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota within the time-periods designated in the 1999 FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the HMS Charter/Headboat sectors, the retention limits must be adjusted as

expeditiously as possible so the impacted sectors can benefit from the adjustment.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 27, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06-8435 Filed 9-28-06; 2:57 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263-6028-03; I.D. 092106A]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to groundfish management measures; request for comments.

SUMMARY: NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) October 1, 2006. Comments on this rule will be accepted through November 2, 2006.

ADDRESSES: You may submit comments, identified by I.D. 092106A by any of the following methods:

• E-mail: GroundfishInseason10.nwr@noaa.gov. Include I.D. 092106A in the subject line of the message.

• Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

• Fax: 206-526-6736, Attn: Jamie Goen.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206-526-6150; fax: 206-526-6736; or e-mail: jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: www.gpoaccess.gov/fr/index.html.

Background information and documents are available at the Pacific Fishery Management Council's (Pacific Council's) website at: www.pcouncil.org.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at Title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Council, and are implemented by NMFS. The specifications and management measures for 2005-2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); November 1, 2005 (70 FR 65861); and December 5, 2005 (70 FR 723850). Longer-term changes to the 2006 specifications and management measures were published in the **Federal Register** as a proposed rule on December 19, 2005 (70 FR 75115), and as a final rule on February 17, 2006 (71 FR 8489). The final rule

was subsequently amended on March 27, 2006 (71 FR 10545), April 11, 2006 (71 FR 18227), April 26, 2006 (71 FR 24601), May 11, 2006 (71 FR 27408), May 22, 2006 (71 FR 29257), June 1, 2006 (71 FR 31104), July 3, 2006 (71 FR 37839), August 7, 2006 (71 FR 44590), and August 22, 2006 (71 FR 48824).

The changes to current groundfish management measures implemented by this action were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its September 11-15, 2006, meeting in Foster City, CA. At that meeting, the Pacific Council recommended: (1) increasing the widow rockfish bycatch limit and decreasing the canary rockfish bycatch limit for the commercial limited entry non-tribal primary whiting fishery; (2) increasing the limited entry trawl trip limits coastwide in Period 6 (November-December) for sablefish and petrale sole; (3) closing the open access daily trip limit (DTL) fishery for sablefish north of 36° N. lat. beginning October 1; (4) increasing the limited entry fixed gear and open access DTL fishery for sablefish south of 36° N. lat. beginning October 1; and (5) prohibiting retention of vermilion rockfish by boat anglers in the recreational fishery seaward of the state of Oregon. In addition, NMFS is correcting an error in the footnote for yelloweye rockfish in Table 2b to part 660, subpart G. Pacific Coast groundfish landings will be monitored throughout the year and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

Limited Entry Trawl Non-tribal Whiting Fishery Bycatch Limits for Widow and Canary Rockfish

The Pacific Council considered adjusting the bycatch limits for widow rockfish and canary rockfish in the non-tribal whiting fisheries. An increase in the widow bycatch limit for the non-tribal whiting fishery would buffer against the possibility of a disaster tow that might shut down the fishery before the whiting quota is achieved. A decrease in the canary bycatch limit would provide a precautionary adjustment to the projected total mortality of canary rockfish for all fisheries (commercial, recreational, EFP, and research) while still allowing the whiting quota to be achieved, based on current information about the fishery's bycatch rates.

The Pacific Council considered whether to increase the bycatch limits for widow rockfish in the non-tribal

whiting fishery above the 200 mt specified in regulation. Bycatch of widow rockfish in the whiting fishery was estimated in NMFS Whiting Report #12 to be at 186.47 mt through September 5, 2006. The whiting fishery is nearing the end of its seasons for the various sectors. The shorebased fishery has already closed. The mothership fishery has approximately 5,000 mt (approximately 9 percent of allocation) remaining, and the catcher/processor fishery has approximately 15,000 mt (approximately 20 percent of allocation) remaining. Catch of widow rockfish in the non-tribal whiting fishery is expected to remain low through the remainder of the season. However, widow rockfish tends to be taken sporadically and in infrequent but large amounts. This makes widow rockfish bycatch rates difficult to predict, and there have been past unexpectedly high tows upwards of 20 mt. Therefore, while catch of widow rockfish is expected to remain low, the Pacific Council considered increasing the widow bycatch limit enough to cover an unexpectedly high tow of approximately 20 mt. Increasing the bycatch limit from 200 mt to 220 mt should provide enough widow rockfish to allow the whiting fisheries to catch their whiting allocations without the threat of a single large widow tow shutting non-tribal whiting fisheries down early. In addition, an increase in the widow rockfish bycatch limit to 220 mt is still well within the projected total mortality of widow rockfish (258 mt projected total mortality for all fisheries out of a 289 mt widow rockfish OY).

The Pacific Council also considered a decrease in the canary rockfish bycatch limit to provide a precautionary adjustment to the projected total mortality of canary rockfish for all fisheries (commercial, recreational, EFP, and research). Catch of canary rockfish by research vessels is higher than projected for 2006. Previously, an advisory body to the Pacific Council, the Groundfish Management Team (GMT), had projected 3 mt of canary rockfish would be taken as 2006 research catch in their bycatch scorecard. The bycatch scorecard is a tool used by the GMT to track estimated and projected total mortality of overfished species for the year.

Based on preliminary information from research vessels to date, the 2006 research catch is now 7.5 mt (7.2 mt from the NMFS triennial trawl survey and 0.3 mt from research off Oregon). Additional catch of canary rockfish is likely to occur as the NMFS triennial trawl survey continues from Eureka to San Diego, California. The GMT

reviewed historical survey trend data from 2003–2005 and estimated that an additional 0.3 mt should cover the remainder of the research catch for that area. However, the survey vessel is conducting its survey in the area between 41° N. latitude and 40°10' N. latitude (off of Eureka), which is a known “hot spot” area for canary rockfish. While more than 90 percent of the canary rockfish take in the historical triennial trawl survey occurs north of Eureka, there is the potential for an unexpectedly high tow of canary rockfish. Therefore, the GMT suggested increasing the potential additional research catch from 0.3 mt to 1.0 mt, which should buffer against the potential for a high tow of canary rockfish. Thus, the total projection for canary rockfish mortality from research in the bycatch scorecard will be increased to 8.5 mt through the end of the year (7.5 mt current total mortality plus 1.0 mt projected total mortality for research during the remainder of the year).

Because the mortality of canary rockfish from research is estimated to be much higher in 2006 than estimated in pre-season projections, the Pacific Council reviewed the bycatch scorecard for estimated mortality of canary rockfish in other fisheries. Some ongoing fisheries are tracking behind their projected take of canary rockfish. The non-tribal whiting fisheries have taken 2.5 mt out of their 4.7 mt canary rockfish bycatch limit. The tribal whiting fishery has taken 0.3 mt through August out of a projected 1.6 mt canary mortality, and the tribal midwater trawl fishery is also tracking behind in the bycatch scorecard. In addition, recreational fisheries are tracking behind their estimated take of canary rockfish at this time. Thus, there is the potential for canary rockfish total mortality to come in below the bycatch scorecard projections for the year.

Even with many fisheries tracking behind their projected canary rockfish take for the year, the Pacific Council recommended reducing the canary rockfish bycatch limit in the non-tribal whiting fishery from 4.7 mt to 4.0 mt in regulation, as a precautionary measure. The non-tribal whiting fishery is estimated to have taken 2.5 mt out of their 4.7 mt canary rockfish bycatch limit, as of September 5, 2006. As a comparison, the non-tribal whiting fishery took 3.3 mt of canary rockfish in its 2005 season. Given other updates to the bycatch scorecard, the non-tribal whiting bycatch limit would need to be reduced to 4.0 mt, to ensure that estimates within the scorecard remain within the 2006 OY for canary rockfish.

With the shorebased fishery closed and limited amounts of the whiting allocation remaining for the mothership and catcher/processor sector, the non-tribal whiting fishery will likely remain within the lower 4.0 mt canary rockfish bycatch limit.

With all of the updates to the bycatch scorecard, projected total mortality of canary rockfish for the year in the bycatch scorecard is 47.1 mt, equivalent to the OY for 2006, while widow rockfish is projected to be 278 mt, below the OY of 289 mt. However, as mentioned previously, many fisheries are expected to come in below their projections of canary rockfish take for the year. The Pacific Council's GMT anticipates updating the bycatch scorecard with new inseason information at the Council's November 13–17, 2006, meeting.

Therefore, the Pacific Council recommended and NMFS is implementing a reduction in the canary rockfish bycatch limit from 4.7 mt to 4.0 mt, and an increase in the widow rockfish bycatch limit from 200 mt to 220 mt.

Limited Entry Trawl Trip Limits

Catch of petrale sole and sablefish in the limited entry bottom trawl fisheries is tracking behind projections. The Pacific Council considered increasing trip limits in Period 6 (November–December) to 70,000 lb (31,752 kg) per 2 months for petrale sole and to 20,000 lb (9,072 kg) per 2 months for sablefish to provide some increase in fishing opportunity while staying within the OYs for these species. North of 40°10' N. lat., these increases would only apply seaward of the trawl rockfish conservation area (RCA). The Pacific Council also considered whether increased catches of these species could be accommodated without increasing impacts on overfished species beyond what is projected to remain within the OY. These trip limit changes would increase the estimated mortality of the following overfished species: bocaccio, darkblotched rockfish and Pacific Ocean perch (POP). However, the estimated impacts on these overfished species as a result of the trip limit adjustments, combined with all estimated mortality, are within the 2006 OYs for those species.

Therefore, the Pacific Council recommended and NMFS is implementing trip limit adjustments for the limited entry bottom trawl fishery in Period 6 (November–December) as follows: (1) north of 40°10' N. lat., increase petrale sole trip limits from 60,000 lb (27,216 kg) per 2 months to 70,000 lb (31,752 kg) per 2 months for

large and small footrope trawl gear; (2) north of 40°10' N. lat., increase sablefish trip limits from 14,000 lb (6,350 kg) per 2 months to 20,000 lb (9,072 kg) per 2 months for large and small footrope trawl gear; (3) south of 40°10' N. lat., increase petrale sole trip limits from 60,000 lb (27,216 kg) per 2 months to 70,000 lb (31,752 kg) per 2 months; and (4) south of 40°10' N. lat., increase sablefish trip limits from 17,000 lb (7,711 kg) per 2 months to 20,000 lb (9,072 kg) per 2 months.

Open Access DTL Fishery for Sablefish North of 36° N. lat.

Catch of sablefish in the open access (OA) DTL fishery continues to be higher than in previous years. To slow the catch of sablefish earlier in the year, NMFS reduced the OA sablefish daily trip limit, or DTL, fishery cumulative trip limit north of 36° N. lat. from 5,000 lb (2,268 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months (71 FR 24601, April 26, 2006). The Council recommended this reduction in anticipation of a large influx of fishing effort into the sablefish DTL fishery from vessels unable to participate in this year's highly restricted salmon fishery. Reducing the cumulative limit was intended to provide for a longer season, which was thought to most benefit fishers who have historically participated in the year-round fishery.

To date, the catch of OA sablefish is higher in 2006 than catch projected from historical data. This supports the assumptions that restrictions in the salmon fishery may have led to increased effort in the OA sablefish DTL fishery. PacFIN estimates the OA sablefish DTL catch through August to be 524 mt, out of a 613 mt harvest guideline north of 36° N. lat. Given that this sector has caught an average of 70–80 mt of sablefish per month since March, the OA DTL fishery is expected to attain their sablefish allocation in early October.

Therefore, the Pacific Council recommended and NMFS is implementing a reduction in the OA sablefish DTL fishery trip limits north of 36° N. lat. beginning October 1 from “300 lb (136 kg) per day, or 1 landing per week of up to 1,000 lb (454 kg), not to exceed 3,000 lb (1,361 kg) per 2 months” to “closed.”

Limited Entry Fixed Gear & Open Access DTL Fishery for Sablefish South of 36° N. lat.

While OA DTL fisheries north of 36° N. lat. are tracking ahead of schedule, limited entry fixed gear and OA sablefish DTL fisheries south of 36° N. lat. are tracking behind schedule.

PacFIN data through the end of August estimates that 52 mt out of a 271-mt total catch OY have been taken south of 36° N. lat. There is not an allocation between limited entry or open access sablefish fisheries in this area.

Because sablefish fisheries south of 36° N. lat. are tracking behind schedule, the Pacific Council discussed increasing trip limits for the limited entry fixed gear and OA sablefish DTL fisheries south of 36° N. lat. from 350 lb (159 kg) per day to 500 lb (227 kg) per day beginning October 1, leaving the weekly limit the same. Leaving the weekly limit the same is intended to discourage increased effort from shifting from waters north of 36° N. lat., which will close October 1. This action would not increase estimated impacts on overfished species, including canary rockfish, because estimated mortality for overfished species for the year assume that this sector will achieve its allocation.

Therefore, the Pacific Council recommended and NMFS is implementing an increase in the limited entry fixed gear and OA sablefish DTL fishery trip limits south of 36° N. lat. beginning October 1 from “350 lb (159 kg) per day, or 1 landing per week of up to 1,050 lb (476 kg)” to “500 lb (227 kg) per day, or 1 landing per week of up to 1,050 lb. (476 kg).”

Oregon Recreational Fishery

Vermilion rockfish is a federally-managed species under the Pacific Coast Groundfish FMP. However, the state of Oregon has more restrictive state harvest limits for vermilion rockfish than the federal limits. The federal and state governments work cooperatively to manage the OYs for Pacific Coast groundfish species, such as vermilion rockfish, from 0–200 nm.

In the Oregon recreational groundfish fishery, the Oregon Department of Fish and Wildlife (ODFW) manages vermilion rockfish under a state harvest limit as part of the “other nearshore rockfish” aggregate, which also includes brown, china, copper, grass, quillback, and tiger rockfishes). In June, the catch rate of the “other nearshore rockfish” aggregate was tracking higher than expected and projections showed that without action, the harvest limit would be prematurely attained. Vermilion rockfish represented approximately half of the landings in the “other nearshore rockfish” aggregate. ODFW took management action specific to vermilion rockfish to prevent the “other nearshore rockfish” aggregate from reaching the Oregon state harvest limit. Effective June 24, 2006, ODFW prohibited the retention of vermilion

rockfish in the recreational ocean and estuary boat fisheries.

Therefore, in order to conform recreational management measures for Federal waters (3–200 nm) to management measures for Oregon state waters (0–3 nm), the Pacific Council recommended and NMFS is implementing a prohibition on the retention of vermilion rockfish by boat anglers in Federal recreational regulations off Oregon.

Yelloweye Rockfish Recreational Harvest Guideline Boundary Correction

NMFS is correcting an error in the footnote for yelloweye rockfish in Table 2b to part 660, subpart G. Table 2b is part of the acceptable biological catch (ABC)/OY tables. Footnote aa/ for yelloweye rockfish was revised on May 22, 2006 (71 FR 29257). In the preamble for this revision, NMFS explained that the recreational harvest guideline is divided north and south of the Oregon/California border, at 42° N. lat., as recommended by the Pacific Council and as analyzed in the Environmental Impact Statement for the 2005–2006 groundfish specifications and management measures. However, the footnote in the table divided the recreational harvest guideline at the wrong place, at 40°10' N. lat. Therefore, NMFS is correcting footnote aa/ for yelloweye rockfish to break the recreational harvest guideline at 42° N. lat. (Oregon/California border) instead of 40°10' N. lat. The recreational harvest guideline of 6.7 mt is managed jointly by Oregon and Washington north of 42° N. lat., and the recreational harvest guideline of 3.7 mt is managed by California south of 42° N. lat. This correction is necessary for the states to be able to manage their respective state harvest guidelines consistent with the record and intent for this fishery.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity for public comment on this action, as notice and comment would be impracticable. The data upon which

these recommendations were based was provided to the Pacific Council, and the Pacific Council made its recommendations at its September 11–15, 2006, meeting in Foster City, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect commercial and recreational groundfish fisheries. Changes to the limited entry non-whiting trawl fishery must be implemented in a timely manner by November 1, 2006, to allow fishermen an opportunity to harvest higher trip limits for stocks tracking behind their projected OY and within projected mortality for overfished species. The reduction to the canary rockfish bycatch limit for the limited entry non-tribal whiting trawl fishery must be implemented in a timely manner by October 1, 2006, to keep mortality of canary rockfish, an overfished species, within its projection for the year. The increase to the widow rockfish bycatch limit for the limited entry non-tribal whiting trawl fishery must be implemented in a timely manner by October 1, 2006, to allow the take of the whiting allocation while keeping mortality of widow rockfish, an overfished species, within its projection for the year. Changes to the open access sablefish fishery north of 36° N. lat. must be implemented in a timely manner by October 1, 2006, to keep harvest of sablefish within the allocation for this fishery. Changes to the limited entry fixed gear and open access sablefish fishery south of 36° N. lat. must be implemented in a timely manner by October 1, 2006, to allow fishermen an opportunity to harvest higher trip limits for stocks tracking behind their projected OY and within projected mortality for overfished species. Changes to the recreational fishery must be implemented by October 1, 2006, in order to conform to existing state regulations and to keep recreational harvest within state harvest limits. Changes to the yelloweye rockfish recreational harvest guideline boundary must be implemented by October 1, 2006, to allow the states to take management action should a

yelloweye rockfish recreational harvest guideline be reached before the end of the year. Delaying any of these changes would keep management measures in place that are not based on the best available data, which could risk fisheries exceeding their OY, or deny fishermen access to available harvest. This would impair managing fisheries to stay within the OYs for the year, or would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: September 27, 2006.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, 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 § 660.373, paragraph (b)(4) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) *2005 2006 bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370 (c)(1)(ii). These limits are routine management measures under § 660.370 (c) and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. For 2005, the whiting fishery bycatch limits for the sectors identified § 660.323(a) are 4.7 mt of canary rockfish and 212 mt of widow rockfish. For 2006, the whiting fishery bycatch limits are 4.0 mt of canary rockfish, 220 mt of widow rockfish, and 25 mt of darkblotched rockfish.

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■ 3. In § 660.384, paragraph (c)(2)(iii) is revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(2) * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 6 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon

and other groundfish species. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast “all-depth” sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish. “All-depth” season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1 800 662 9825. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas. From October 1 through December 31, 2006, taking and retaining vermilion rockfish is prohibited in all areas by boat anglers.

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■ 4. In part 660, subpart G, Table 2b is revised to read as follows:

Table 2b to Part 660, Subpart G—2006, and Beyond, OYs for Minor Rockfish by Depth Subgroups (Weights in Metric Tons)

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial HG for minor rockfish and depth subgroups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish north cc/	3,680	2,250	78	2,172	1,992	91.7	180	8.3
Nearshore		122	68	54				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish south dd/	3,412	1,968	443	1,390	774	55.7	616	44.3
Nearshore ii/		615	383	97				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABCs apply to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A coastwide stock assessment was prepared in 2003. Lingcod was believed to be at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south. The ABC projection for 2006 is 2,716 mt and was calculated using an F_{MSY} proxy of $F_{45\%}$. The total catch OY of 2,414 mt (the sum of 1,891 mt in the north and 612 mt in the south) is based on the rebuilding plan with a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2009 (T_{MAX}). The harvest control rule will be $F=0.17$ in the north and $F=0.15$ in the south. Out of the OY, it is estimated that 693 mt will be taken in the recreational fishery, 7.2 mt will be taken during research activity, and 2.8 mt will be taken in non-groundfish fisheries. Under the 2006 management measures, it is anticipated that 214.7 mt will be taken in the commercial fisheries (which is being set as a commercial HG), leaving a residual amount of 1,496.3 mt to be used as necessary during the fishing year. There is a recreational harvest guideline of 271 mt for the area north of 42° N. lat. and a recreational harvest guideline of 422 mt for the area south of 42° N. lat. The tribes do not have a specific allocation at this time, but are expected to take 25.1 mt of the commercial HG.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial HG of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific Cod - The 3,200 mt ABC is based on historical landings data and is set at the same level as it was in 2004. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. The OY is reduced by 400 mt for the tribal harvest guideline, resulting in a commercial harvest guideline of 1,200 mt.

e/ Pacific whiting - The most recent stock assessment was prepared in early 2006, and the whiting biomass was estimated to be between 31 percent and 38 percent of its unfished biomass. The U.S. ABC of 518,294 mt is based on the 2006 assessment results with the application of an F_{MSY} proxy harvest rate of 40%. The U.S. ABC is 73.88 percent of the coastwide ABC. The U.S. total catch OY is being set at 269,069 mt. The total catch OY is reduced by 35,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 232,069 mt. The commercial OY is allocated between the sectors with 42 percent (97,469 mt) going to the shore-based sector, 34 percent (78,903 mt) going to the catcher/processor sector, and 24 percent (55,696 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

f/ Sablefish north of 36° N. lat. - A coastwide sablefish stock assessment was prepared in 2001 and updated for 2002. Following the 2002 stock assessment update, the sablefish biomass north of 34°27' N. lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,175 mt is based on environmentally driven projections with the F_{MSY} proxy of $F_{45\%}$. The ABC for the management area north of 36° N. lat. is 7,885 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,634 mt (the sum of 7,363 mt in the north and 271 mt in the south) is based on the density-dependent model and the application of the 40–10 harvest policy. The total catch OY for the area north of 36° N. lat. is 7,363 mt and is 96.45 percent of the coastwide OY. The OY is reduced by 10 percent (736 mt) for the tribal allocation. Out of the remaining OY, 86 mt will be taken during research activity, and 19 mt will be taken in non-groundfish fisheries, resulting in a commercial HG of 6,522 mt. The open access allocation is 9.4 percent (613 mt) of the commercial HG and the limited entry allocation is 90.6 percent (5,909 mt) of the commercial HG. The limited entry allocation is further divided with 58 percent (3,427 mt) allocated to the trawl fishery and 42 percent (2,482 mt) allocated to the fixed-gear fishery. To provide for bycatch in the at-sea whiting fishery, 15 mt of the limited entry trawl allocation will be set aside.

g/ Sablefish south of 36° N. lat. - The ABC of 290 mt is 3.55 percent of the ABC from the 2002 coastwide stock assessment update. The total catch OY of 271 mt is 3.55 percent of the OY from the 2002 coastwide stock assessment update. There are no limited entry or open access allocations in the Conception area at this time.

h/ Cabezon was first assessed in 2003 and was believed to be at 34.7 percent of its unfished biomass. The ABC of 108 mt is based on a harvest rate proxy of $F_{45\%}$. The OY of 69 mt is based on a constant harvest level for 2005 and 2006.

i/ Dover sole north of 34°27' N. lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,589 mt is the 2006 projection from the 2001 assessment with an F_{MSY} proxy of $F_{40\%}$. Because the biomass is estimated to be in the precautionary zone, the 40–10 harvest rate policy was applied, resulting in a total catch OY of 7,564 mt. The OY is reduced by 60 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 7,504 mt.

j/ English sole - Research catch is estimated to be 9.7 mt.

k/ Petrale sole was believed to be at 42 percent of its unfished biomass following a 1999 stock assessment. For 2006, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000–2003 with a $F_{40\%}$ F_{MSY} proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2005. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment in the Vancouver-Columbia area) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. Research catch is estimated to be 2.9 mt and will be taken out of the OY.

l/ Arrowtooth flounder was last assessed in 1993 and was believed to be above 40 percent of its unfished biomass. Research catch is estimated to be 13.6 mt and will be taken out of the OY.

m/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels. The ABC of 6,781 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981–2003 period and on the average landings from the 1994–1998 period for the remaining other flatfish species. The OY of 4,909 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species. Research catch is estimated to be 20.5 mt and will be taken out of the OY.

n/ POP was declared overfished on March 3, 1999. A stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 934 mt was projected from the 2003 stock assessment and is based on an F_{MSY} proxy of $F_{50\%}$. The OY of 447 mt is based on a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule will be $F=0.0257$. Out of the OY it is anticipated that 4.6 mt will be taken during research activity and 102.6 mt in the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 339.8 mt to be used as necessary during the fishing year.

o/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the stock assessment. The available OY is reduced by 12 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 13,888 mt.

p/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The most recent stock assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass in 2002. The ABC of 3,059 mt is based on an $F_{50\%}$ F_{MSY} proxy. The 289 mt OY is based on a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule is $F=0.0093$. Out of the OY, it is anticipated that 1.0 mt will be taken during the research activity, 2.3 mt will be taken in the recreational fishery, 0.1 mt will be taken in non-groundfish fisheries, and 285.6 mt will be taken in the commercial fishery (which is being set as the commercial HG). Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2006, but do not have a specific allocation at this time. The widow rockfish bycatch limit for the commercial Pacific whiting fisheries is 200 mt. This amount may be adjusted via inseason action.

q/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A stock assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide in 2001. The coastwide ABC of 279 mt is based on a F_{MSY} proxy of 50%. The coastwide OY of 47.1 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2076 (T_{MAX}) and a catch sharing arrangement that has 58 percent of the OY going to the commercial fisheries and 42 percent going to the recreational fisheries. The harvest control rule will be $F=0.0220$. Out of the OY, it is anticipated that 2.7 mt will be taken during the research activity, 17.8 mt will be taken in the recreational fishery, 2.1 mt will be taken in non-groundfish fisheries, and 22.7 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 1.8 mt. The residual amount will be further divided with 0.9 mt being available as needed for the recreational and 0.9 mt being available as needed for the commercial fisheries. A recreational HG for the area north of 42° N. lat. will be 8.5 mt. For the area south of 42° N. lat., the recreational HG will be 9.3 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.6 mt of canary rockfish under the commercial HG, but do not have a specific allocation at this time. The canary rockfish bycatch limit for the commercial Pacific whiting fisheries is 4.7 mt. This amount may be adjusted via inseason action.

r/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999–2001 with a 50% F_{MSY} proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery and 21 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,964 mt. Open access is allocated 44.3 percent (870 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,094 mt) of the commercial HG.

s/ Bocaccio was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis were prepared for bocaccio in 2003. The bocaccio stock was believed to be at 7.4 percent of its unfished biomass in 2002. The ABC of 549 mt is based on a 50% F_{MSY} proxy. The OY of 308 mt is based on the rebuilding analysis and has a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2032 (T_{MAX}). The harvest control rule is $F=0.0498$. Out of the OY, it is anticipated that 0.6 mt will be taken during the research activity, 43.0 mt will be taken in the recreational fishery, 1.3 mt will be taken in non-groundfish fisheries, and 75.2 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 187.9 mt to be used as necessary during the fishing year.

t/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data.

u/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was believed to be at 46 percent of its unfished biomass in 2002. The ABC of 3,681 mt is based on the 2003 stock assessment with the F_{MSY} proxy of 50%. The OY of 3,681 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 5 mt for the amount estimated to be taken during research activity, and 6 mt for the amount taken in non-groundfish fisheries, resulting in a commercial HG of 3,655 mt. The open access allocation (303 mt) is 8.3 percent of the commercial HG. The limited entry allocation (3,352 mt) is 91.7 percent of the commercial HG. Tribal vessels are estimated to land about 506 mt of yellowtail rockfish in 2006, but do not have a specific allocation at this time.

v/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,077 mt) for the area north of Pt. Conception (34°27' N. lat.) is based on a 50% F_{MSY} proxy. The OY of 1,018 mt is based on the 2001 survey with the application of the 40–10 harvest policy. The OY is reduced by 7 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,011 mt. Open access is allocated 0.27 percent (27 mt) of the commercial HG and limited entry is allocated 99.73 percent (984 mt) of the commercial HG. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 6.6 mt of shortspine thornyhead in 2006, but do not have a specific allocation at this time.

w/ Longspine thornyhead north of 36° N. lat. is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on a 50% F_{MSY} proxy. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The total catch OY (2,461 mt) is set equal to the ABC. The OY is reduced by 12 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 2,449 mt.

x/ Longspine thornyhead south of 36° - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

y/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 stock assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993–1997. The OY of 4.2 mt (2.1 mt in each area) is based on the rebuilding plan adopted under Amendment 16–3, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2099 (T_{MAX}). The harvest control rule is $F=0.009$. Cowcod retention will not be permitted in 2006. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

z/ Darkblotched rockfish was assessed in 2000 and a stock assessment update was prepared in 2003. Darkblotched rockfish was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 stock assessment update, the darkblotched rockfish stock was believed to be at 11 percent of its unfished biomass. A new darkblotched rockfish assessment was prepared for 2005. The 2005 darkblotched rockfish stock assessment found that darkblotched has been rebuilding at a faster rate than had been shown in the 2003 stock assessment. The ABC of 294 mt was projected from the 2003 assessment update and is based on an F_{MSY} proxy of 50%. The 2006 OY will be 200 mt. This OY is 94 mt below the 294 mt OY originally in place for 2006, which was based on the rebuilding plan adopted under Amendment 16–2 and a harvest control rule of $F=0.032$ [69 FR 77012]. Based on the results of the 2005 assessment, NMFS estimates that reducing the 2006 OY to 200 mt is projected to rebuild the darkblotched rockfish stock to B_{MSY} by March 2010, as compared to the July 2010 rebuilding date that was projected with a 294 mt OY. Out of the OY, it is anticipated that 5.2 mt will be taken during research activity, leaving 194.8 mt available to the commercial fishery.

aa/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the stock assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 55 mt coastwide ABC is based on an F_{MSY} proxy of 50%. The OY of 27 mt, based on a revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16–3, have a 80 percent probability of rebuilding to B_{MSY} by the year 2071 (T_{MAX}) and a harvest control rule of $F=0.0153$. Out of the OY, it is anticipated that 10.4 mt will be taken in the recreational fishery (the HG for the area north of 42° N. lat. is 6.7 mt and the HG for the area south of 42° N. lat. is 3.7 mt), 1.0 mt will be taken during research activity, 0.8 mt will be taken in non-groundfish fisheries and 6.4 mt will be taken in the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 8.4 mt to be used as necessary during the fishing year. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial HG in 2006, but do not have a specific allocation at this time.

bb/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 736 mt. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of F50%. The unfished biomass is believed to be above 40 percent. Therefore, the OYs were set equal to the ABCs, 540 mt for the area north of 46°16' N. lat. and 736 mt for the area south of 46°16' N. lat. A harvest guideline of 30,000 lb (13.6 mt) is set for the tribes. The black rockfish OY in the area south of 46°16' N. lat. is subdivided with separate HGs being set for the area north of 42° N. lat. (427 mt/58 percent) and for the area south of 42° N. lat. (309 mt/42 percent). For the 427 mt attributed to the area north of 42° N. lat. 290–360 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 67–137 mt. A range is being provided because the recreational and commercial shares are not currently available. Of the 309 mt of black rockfish attributed to the area south of 42° N. lat., a HG of 185 mt (60 percent) will be applied to the area north of 40°10' N. lat. and a HG of 124 mt (40 percent) will be applied to the area south of 40°10' N. lat. For the area between 42° N. lat. and 40°10' N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 111 mt. For the area south of 40°10' N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 23 mt. Black rockfish was included in the minor rockfish north and other rockfish south categories until 2004.

cc/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ($F=0.75M$) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery, resulting in a 2,172 mt commercial HG. Open access is allocated 8.3 percent (180 mt) of the commercial HG and limited entry is allocated 91.7 percent (1,992 mt) of the commercial HG. Tribal vessels are estimated to land about 28 mt of minor rockfish in 2006, but do not have a specific allocation at this time.

dd/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,412 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ($F=0.75M$) as a precautionary adjustment. To obtain a total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 443 mt for the amount estimated to be taken in the recreational fishery, resulting in a 1,525 mt HG for the commercial fishery. Open access is allocated 44.3 percent (676 mt) of the commercial HG and limited entry is allocated 55.7 percent (849 mt) of the commercial HG.

ee/ Bank rockfish -- The ABC is 350 mt, which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

ff/ Blackgill rockfish was believed to be at 51 percent of its unfished biomass in 1997. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 stock assessment with an F_{MSY} proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of the lack of information.

gg/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively. The amount expected to be taken during research activity is reduced by 22.1 mt.

hh/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote c/. The amount expected to be taken during research activity is 55.7 mt.

ii/ Minor nearshore rockfish south - The total catch OY is 615 mt. Out of the OY it is anticipated that the recreational fishery will take 383 mt, and 97 mt will be taken by the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 135 mt to be used as necessary during the fishing year.

■ 5. In part 660, subpart G, Table 3 (North) and Table 3 (South) are revised to read as follows:

Table 3 (North) to Part 660, Subpart G—2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

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Table 3 (North) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.**Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table**

92006

	JAN	FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{6/}:							
North of 40°10' N. lat.	75 fm - modified 200 fm ^{7/}		75 - 200 fm		100 - 250 fm	75 fm - 250 fm	75 fm - modified 250 fm ^{7/}
Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.							
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).							
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
1 Minor slope rockfish ^{2/} & Darkblotched rockfish	2,000 lb/ month		4,000 lb/ 2 months		1,000 lb/ 2 months		
2 Pacific ocean perch	1,500 lb/ month		3,000 lb/ 2 months				
3 DTS complex							
4 Sablefish							
5 large & small footrope gear	7,000 lb/ month	14,000 lb/ 2 months	20,000 lb/ 2 months				
6 selective flatfish trawl gear	2,500 lb/ month	7,000 lb/ 2 months	13,500 lb/ 2 months		7,000 lb/ 2 months	5,000 lb/ 2 months	
7 multiple bottom trawl gear ^{8/}	2,500 lb/ month	7,000 lb/ 2 months	13,500 lb/ 2 months		7,000 lb/ 2 months	5,000 lb/ 2 months	
8 Longspine thornyhead							
9 large & small footrope gear	7,500 lb/ month	15,000 lb/ 2 months	23,000 lb/ 2 months			15,000 lb/ 2 months	
10 selective flatfish trawl gear	1,500 lb/ month	3,000 lb/ 2 months					
11 multiple bottom trawl gear ^{8/}	1,500 lb/ month	3,000 lb/ 2 months					
12 Shortspine thornyhead							
13 large & small footrope gear	2,000 lb/ month	4,000 lb/ 2 months	5,800 lb/ 2 months	7,500 lb / 2 months		4,000 lb/ 2 months	
14 selective flatfish trawl gear	1,500 lb/ month	3,000 lb/ 2 months					
15 multiple bottom trawl gear ^{8/}	1,500 lb/ month	3,000 lb/ 2 months					
16 Dover sole							
17 large & small footrope gear	25,000 lb/ month	50,000 lb/ 2 months	35,000 lb/ 2 months				
18 selective flatfish trawl gear	10,000 lb/ month	28,000 lb/ 2 months				20,000 lb/ 2 months	
19 multiple bottom trawl gear ^{8/}	10,000 lb/ month	28,000 lb/ 2 months				20,000 lb/ 2 months	

TABLE 3 (North)

Table 3 (North). Continued

20	Flatfish (except Dover sole)			
21	Other flatfish ^{3/} , English sole & Petrale sole			
22	large & small footrope gear for Other flatfish ^{3/} & English sole	55,000 lb/ month	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months
23	large & small footrope gear for Petrale sole	30,000 lb/ month		70,000 lb/ 2 months
24	selective flatfish trawl gear for Other flatfish ^{3/} & English sole	45,000 lb/ month	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.
25	selective flatfish trawl gear for Petrale sole	12,500 lb/ month		90,000 lb/ 2 months, no more than 28,000 lb/ 2 months of which may be petrale sole.
26	multiple bottom trawl gear ^{8/}	Other flatfish ^{3/} and English sole: 45,000 lb/ month Petrale sole: 12,500 lb/ month	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 28,000 lb/ 2 months of which may be petrale sole.
27	Arrowtooth flounder			
28	large & small footrope gear	50,000 lb/ month	100,000 lb/ 2 months	
29	selective flatfish trawl gear	40,000 lb/ month	80,000 lb/ 2 months	
30	multiple bottom trawl gear ^{8/}	40,000 lb/ month	80,000 lb/ 2 months	
31	Whiting			
32	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED		
33	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip -- After the primary whiting season: 10,000 lb/trip		
34	Minor shelf rockfish ^{1/}, Shortbelly, Widow & Yelloweye rockfish			
35	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED		
36	large & small footrope gear	150 lb/ month	300 lb/ 2 months	
37	selective flatfish trawl gear	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
38	multiple bottom trawl gear ^{8/}	300 lb/ month	300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month

TABLE 3 (North) cont

Table 3 (North). Continued

39	Canary rockfish				
40	large & small footrope gear	CLOSED			
41	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
42	multiple bottom trawl gear ^{8/}	CLOSED			
43	Yellowtail				
44	midwater trawl	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
45	large & small footrope gear	150 lb/ month	300 lb/ 2 months		
46	selective flatfish trawl gear	1,000 lb/ month	2,000 lb/ 2 months		
47	multiple bottom trawl gear ^{8/}	150 lb/ month	300 lb/ 2 months		
48	Minor nearshore rockfish & Black rockfish				
49	large & small footrope gear	CLOSED			
50	selective flatfish trawl gear	300 lb/ month			
51	multiple bottom trawl gear ^{8/}	CLOSED			
52	Lingcod ^{4/}				
53	large & small footrope gear				
54	selective flatfish trawl gear	600 lb/ month	1,200 lb/ 2 months		
55	multiple bottom trawl gear ^{8/}				
56	Pacific cod	Not limited	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
57	Spiny dogfish	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
58	Other Fish ^{5/}	Not limited			

TABLE 3 (North) cont'

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.

2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G—2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Table 3 (South) to Part 660, Subpart G -- 2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table

92006

	JAN	FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{6/}:							
40°10' - 38° N. lat.	75 fm - 150 fm		100 fm - 150 fm		100 fm - 200 fm	100 fm - 250 fm	75 fm - modified 250 fm ^{7/}
38° - 34°27' N. lat.	75 fm - 150 fm		100 fm - 150 fm				75 fm - 150 fm
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands

Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	Minor slope rockfish^{2/} & Darkblotched rockfish						
2	40°10' - 38° N. lat.	4,000 lb/ month	8,000 lb/ 2 months		1,000 lb/ 2 months		
3	South of 38° N. lat.	20,000 lb/ month	40,000 lb/ 2 months				
4	Splitnose						
5	40°10' - 38° N. lat.	4,000 lb/ month	8,000 lb/ 2 months		1,000 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ month	40,000 lb/ 2 months				
7	DTS complex						
8	Sablefish	8,500 lb/ month	17,000 lb/ 2 months				20,000 lb/ 2 months
9	Longspine thornyhead	9,500 lb / month	19,000 lb/ 2 months				
10	Shortspine thornyhead						
	40°10' - 38° N. lat.	2,450 lb/ month	4,900 lb/ 2 months		7,500 lb/ 2 months		4,900 lb/ 2 months
	South of 38° N. lat.				4,900 lb/ 2 months		
11	Dover sole	25,000 lb/ month	50,000 lb/ 2 months	35,000 lb/ 2 months			
12	Flatfish (except Dover sole)						
13	Other flatfish^{3/} & English sole						
14	40°10' - 38° N. lat.	55,000 lb/ month	Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	South of 38° N. lat.						70,000 lb/ 2 months
16	Petrable sole	30,000 lb/ month					70,000 lb/ 2 months

TABLE 3 (South)

Table 3 (South). Continued

17	Arrowtooth flounder				
18	40°10' - 38° N. lat.	5,000 lb/ month	10,000 lb/ 2 months		
19	South of 38° N. lat.				
20	Whiting				
21	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED			
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip - After the primary whiting season: 10,000 lb/trip			
23	Minor shelf rockfish^{1/}, Chilipepper, Shortbelly, Widow, & Yelloweye rockfish				
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
25	large footrope or midwater trawl for Chilipepper	1,000 lb/ months	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
27	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month		300 lb/ month	
28	small footrope trawl for Chilipepper			500 lb/ month	
29	Bocaccio				
30	large footrope or midwater trawl	150 lb/ month	300 lb/ 2 months		
31	small footrope trawl	CLOSED			
32	Canary rockfish				
33	large footrope or midwater trawl	CLOSED			
34	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
35	Cowcod	CLOSED			
36	Minor nearshore rockfish & Black rockfish				
37	large footrope or midwater trawl	CLOSED			
38	small footrope trawl	300 lb/ month			
39	Lingcod^{4/}				
40	large footrope or midwater trawl	600 lb/ month	1,200 lb/ 2 months		
41	small footrope trawl				
42	Pacific cod	Not limited	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
43	Spiny dogfish	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
44	Other Fish^{5/} & Cabezon	Not limited			

TABLE 3 (South) cont

1/ Yellowtail is included in the trip limits for minor shelf rockfish.

2/ POP is included in the trip limits for minor slope rockfish

3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ Other fish are defined at § 660.302 and include sharks, skates, rattfish, morids, grenadiers, and kelp greenling.

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 6. In part 660, subpart G, Table 4 (South) is revised to read as follows:

Table 4 (South) to Part 660, Subpart G—2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Table 4 (South). Continued

30	Lingcod ^{3/}	CLOSED		800 lb/ 2 months	CLOSED	TABLE 4 (South) cont'
31	Pacific cod	Not limited	1,000 lb/ 2 months			
32	Spiny dogfish	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
33	Other fish ^{4/} & Cabezon	Not limited				

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curffin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 7. In part 660, subpart G, Table 5 (North) and Table 5 (South) are revised to read as follows:

Table 5 (North) to Part 660, Subpart G—2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Table 5 (North) to Part 660, Subpart G -- 2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table

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	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA) ^{6/}:						
North of 46°16' N. lat.	shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1 Minor slope rockfish ^{1/} & Darkblotched rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2 Pacific ocean perch	100 lb/ month					
3 Sablefish	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months			CLOSED	
4 Thornyheads	CLOSED					
5 Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weights per line are not subject to the RCAs.		3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.			
6 Arrowtooth flounder						
7 Petrale sole						
8 English sole						
9 Other flatfish ^{2/}						
10 Whiting	300 lb/ month					
11 Minor shelf rockfish ^{1/} , Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
12 Canary rockfish	CLOSED					
13 Yelloweye rockfish	CLOSED					
14 Minor nearshore rockfish & Black rockfish						
15 North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{3/}					
16 42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish ^{3/}					
17 Lingcod ^{4/}	CLOSED		300 lb/ month		CLOSED	
18 Pacific cod	Not limited	1,000 lb/ 2 months				
19 Spiny dogfish	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months		
20 Other Fish ^{5/}	Not limited					

TABLE 5 (North)

Table 5 (North). Continued

21 PINK SHRIMP NON-GROUNDFISH TRAWL (not subject to RCAs)		
22	North	Effective April 1 - October 31: groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.
23 SALMON TROLL		
24	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

TABLE 5 (North) cont

- 1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish.
Splitnose rockfish is included in the trip limits for minor slope rockfish.
- 2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
- 3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
- 4/ The size limit for lingcod is 24 inches (61 cm) total length.
- 5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
Cabezon is included in the trip limits for "other fish."
- 6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
- To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart
G—2006 Trip Limits for Open Access
Gears South of 40°10' N. Lat.

Table 5 (South) to Part 660, Subpart G -- 2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table

92006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{5/}:							
40°10' - 34°27' N. lat.		30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
South of 34°27' N. lat.		60 fm - 150 fm (also applies around islands)					
<p>See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).</p>							
<p>State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.</p>							
1	Minor slope rockfish ^{1/} & Darkblotched rockfish						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	Splitnose	200 lb/ month					
5	Sablefish						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months		CLOSED		
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb				500 lb/ day, or 1 landing per week of up to 1,050 lb	
8	Thornyheads						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.			
12	Arrowtooth flounder						
13	Petrале sole						
14	English sole						
15	Other flatfish ^{2/}						
16	Whiting	300 lb/ month					
17	Minor shelf rockfish ^{1/} , Shortbelly, Widow & Chilipepper rockfish						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	750 lb/ 2 months					
20	Canary rockfish	CLOSED					
21	Yelloweye rockfish	CLOSED					
22	Cowcod	CLOSED					
23	Bocaccio						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 5 (South)

Table 5 (South). Continued

26	Minor nearshore rockfish & Black rockfish						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months			
30	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
32	Lingcod ^{3/}	CLOSED		300 lb/ month, when nearshore open		CLOSED	
33	Pacific cod	Not limited	1,000 lb/ 2 months				
34	Spiny dogfish	Not limited	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months		
35	Other Fish ^{4/} & Cabezon	Not limited					
36	RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL						
37	NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:						
38	40°10' - 38° N. lat.	75 fm - modified 200 fm ^{7/}	100 fm - 200 fm	100 fm - 150 fm	100 fm - 200 fm	100 fm - 250 fm	75 fm - modified 250 fm ^{7/}
39	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
40	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
41	NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:						
42	40°10' - 38° N. lat.	75 fm - modified 200 fm ^{7/}	100 fm - 200 fm	100 fm - 150 fm	100 fm - 200 fm	100 fm - 250 fm	75 fm - modified 250 fm ^{7/}
43	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	PINK SHRIMP NON-GROUNDFISH TRAWL GEAR (not subject to RCAs)						
47	South	Effective April 1 - October 31: Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 5 (South) cont'

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

3/ The size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Proposed Rules

Federal Register

Vol. 71, No. 191

Tuesday, October 3, 2006

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

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE-RM/TP-05-500]

RIN 1904-AB53

Energy Conservation Program: Test Procedures for Refrigerated Beverage Vending Machines and Commercial Refrigerators, Freezers and Refrigerator-Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE or the Department) published a notice of proposed rulemaking (NPR) to adopt test procedures for measuring energy efficiency and related definitions for various consumer products and commercial and industrial equipment on July 25, 2006, including refrigerated bottled or canned beverage vending machines and commercial refrigerators, freezers, and refrigerator-freezers. For refrigerated bottled or canned beverage vending machines, the Department proposed to adopt the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 32.1-2004 test procedure for measuring equipment energy consumption and for determining equipment capacity. For commercial refrigerators, freezers, and refrigerator-freezers, the Department proposed to adopt the ANSI/Association of Home Appliance Manufacturers (AHAM) Standard HRF1-1979 for determining equipment capacity.

The Department now proposes an additional method as an alternative means for measuring the capacity of refrigerated bottled or canned beverage vending machines, namely the method to measure refrigerated volume that is

set forth in an updated version of ANSI/AHAM HRF1. The Department also proposes to adopt this updated standard for measuring the volume of commercial refrigerators, freezers, and refrigerator-freezers. The Department will receive written comments in response to the July 25, 2006 NPR or to this supplemental notice of proposed rulemaking (SNOPR).

DATES: The Department held a public meeting on this rulemaking on Tuesday, September 26, 2006, from 9 a.m. to 5 p.m., in Washington, DC.

The Department will accept comments, data, and information regarding this SNOPR no later than October 10, 2006. See section IV, "Public Participation," of this proposed rule for details.

ADDRESSES: You may submit comments, identified by docket number EE-RM/TP-05-500 and/or Regulatory Information Number (RIN) 1904-AB53, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail:

testprocedures_EPACT2005@ee.doe.gov. Include EE-RM/TP-05-500 and/or RIN 1904-AB53 in the subject line of the message.

- Postal Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Energy Conservation Test Procedures for Consumer Products and Commercial Equipment, EE-RM/TP-05-500 and/or RIN 1904-AB53, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one original signed paper.

- 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 must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, "Public Participation," of this proposed rule for details.

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, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945 for additional information regarding visiting the Resource Room. Please note that the Department's Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-2192. E-mail:

Charles.Llenza@ee.doe.gov, or Ms. Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507. E-mail: Francine.Pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
 - A. Authority and Background
 - B. Summary of the Proposed Rule
- II. Discussion
 - A. General Discussion
 - B. Method for Measuring the Refrigerated Volume of Refrigerated Bottled or Canned Beverage Vending Machines
 - C. Method for Measuring the Volume of Commercial Refrigerators, Freezers, and Refrigerator-Freezers
- III. Procedural Requirements
 - A. Review Under Executive Order 12866, "Regulatory Planning and Review"
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 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act of 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 of 2001
 - K. Review Under Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use”

L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974

IV. Public Participation

V. Approval of the Office of the Secretary

I. Introduction

A. Authority and Background

Part B and Part C of Title III of the Energy Policy and Conservation Act, Public Law 93–163, 42 U.S.C. 6291–6309 and 42 U.S.C. 6311–6317 respectively, as amended by the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, provide energy conservation programs for consumer products other than automobiles and for certain commercial and industrial equipment. Further, EPACT 2005 prescribes new or amended energy conservation standards and test procedures, and directs DOE to undertake rulemakings to promulgate such requirements.

Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA by adding, in part, new subsection 325(v)(2), 42 U.S.C. 6295(v)(2), which directs the Secretary to prescribe, by rule, energy conservation standards for refrigerated bottled or canned beverage vending machines. Further, section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA by adding, in part, new subsection 323(b)(15), 42 U.S.C. 6293(b)(15), which states that test procedures for this equipment shall be based on ANSI/ASHRAE Standard 32.1–2004, entitled “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.” Also pursuant to section 135(b)(2) of EPACT 2005, new subsection 323(f) of EPCA, 42 U.S.C. 6293(f)(1), directs the Secretary to prescribe testing requirements for refrigerated bottled or canned beverage vending machines no later than two years after the enactment of EPACT 2005, that is, August 8, 2007. (42 U.S.C. 6293(f)(1)) This section also directs DOE to base such testing requirements on existing industry test procedures, to the maximum extent practicable. (42 U.S.C. 6292(f)(2)) Finally, section 136(c) of EPACT 2005 amends EPCA to require that, for purposes of standards for commercial refrigerators, freezers, and refrigerator-freezers, compartment volumes be measured in accordance with ANSI/AHAM HRF1–1979. (42 U.S.C. 6313(c))

On July 25, 2006, DOE published a notice of proposed rulemaking to adopt test procedures for measuring energy efficiency and water-use efficiency, and related definitions, as well as test sampling, compliance certification, and enforcement requirements, for various

consumer products and commercial and industrial equipment covered by the EPACT 2005 amendments to EPCA (hereafter referred to as the July 2006 proposed rule). 71 FR 42178. The July 2006 proposed rule includes test procedures for refrigerated bottled or canned beverage vending machines. In accordance with the above described amendments to section 323(b) and (f) of EPCA, the Department proposed to incorporate the ANSI/ASHRAE Standard 32.1–2004 test procedure by reference into Title 10 of the Code of Federal Regulations, Part 431 (10 CFR Part 431) for the measurement of energy consumption and determination of capacity of this equipment.

However, on July 11, 2006, while the July 2006 proposed rule was being prepared for publication in the **Federal Register**, the Department held an informal public meeting to present its proposed methodologies for conducting the rulemaking to establish standards for refrigerated bottled or canned beverage vending machines, discuss issues relevant to that rulemaking proceeding, and initiate stakeholder interaction. During the course of the public meeting, stakeholders suggested that “refrigerated volume” would be a more appropriate measure of capacity than “vendible capacity,” which ANSI/ASHRAE Standard 32.1–2004 uses as the measure of capacity for refrigerated bottled or canned beverage vending machines.

B. Summary of the Proposed Rule

In today’s SNOPR, the Department proposes to incorporate by reference the methodology for measuring refrigerated volume in section 5.2 (excluding subsections 5.2.2.2–5.2.2.4) of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” as an additional method for measuring the capacity of refrigerated bottled or canned beverage vending machines. The Department proposes to retain in the final rule, as an alternative means for measuring the capacity for refrigerated bottled or canned beverage vending machines, the “vendible capacity” method which ANSI/ASHRAE Standard 32.1–2004 uses. In addition, the Department proposes to reference ANSI/AHAM HRF1–2004 as the methodology to measure volume for all commercial refrigerators, freezers, and refrigerator-freezers covered under section 342(c) of EPCA, 42 U.S.C. 6313(c).

II. Discussion

A. General Discussion

The Department examined ANSI/ASHRAE Standard 32.1–2004 and believes that it provides sound methods for measuring the daily energy consumption of refrigerated bottled or canned beverage vending machines, and satisfies the requirements of section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3). Therefore, as stated above, in the July 2006 proposed rule the Department proposed to incorporate this test procedure by reference into 10 CFR Part 431. Included in the material DOE would incorporate by reference is the method set forth in ANSI/ASHRAE Standard 32.1–2004 for determining the capacity of this equipment, which the standard refers to as “vendible capacity.” Vendible capacity consists essentially of the maximum number of units of product a vending machine can hold for sale.¹ The ANSI/ASHRAE Standard 32.1–2004 does not use this measure of capacity to determine the actual energy consumption of equipment. However, manufacturers use it to compute allowable energy consumption. Energy conservation standards for refrigeration equipment are typically a function of equipment capacity, and the capacity of each model or basic model of equipment is used to calculate its maximum allowable energy use.

As mentioned above, during the July 11, 2006, standards framework public meeting, stakeholders suggested that refrigerated volume would be a more appropriate measure of capacity than vendible capacity. The Coca-Cola Company stated that it would make sense to use refrigerated volume in establishing standards for energy consumption. (Public Meeting Transcript, No. 8 at p. 106, 124 and 130)² The American Council for an Energy-Efficient Economy (ACEEE) stated that using refrigerated volume instead of vendible capacity, along with

¹ Section 5 of ASHRAE 32.1–2004 defines vendible capacity as “the maximum quantity of standard product that can be dispensed from one full loading of the vending machine without further reload operations when used as recommended by the manufacturer. The standard product shall be 12 oz (355 ml) cans for machines that are capable of dispensing 12 oz (355 ml) cans. For all other machines, the standard product [sic] shall be the product specified by the manufacturer as the standard product.”

² In this and subsequent citations, “Public Meeting Transcript” refers to the transcript of the July 11, 2006, public meeting in the DOE rulemaking on standards for refrigerated bottled or canned beverage vending machines, Docket No. EERE–2006–STD–0125, the “No.8” refers to the document number of the transcript in that Docket, and the page references refer to the place in the transcript where the statement preceding appears.

energy use, would be a reasonable way of establishing baseline energy consumption. (Public Meeting Transcript, No. 8 at p.118) Royal Vendors stated that the metric for measuring the energy consumption of vending machines should be based on volume. (Public Meeting Transcript, No. 8 at pp.123–124) Dixie Narco stated that the industry was in agreement on using refrigerated capacity, not vendible capacity, for this rulemaking. (Public Meeting Transcript, No. 8 at p.124) PepsiCo, Inc. agreed with the idea of using refrigerated volume. (Public Meeting Transcript, No. 8 at p.125)

After considering these comments, the Department now believes refrigerated volume should be included in its rules as a measure of capacity, along with “vendible capacity,” for refrigerated bottled or canned beverage vending machines. This would provide the Department with the means for evaluating whether it should set its standards for this equipment based on one or both of these metrics of capacity. Further, if the Department sets standards based on both metrics, it would have appropriate test procedures in place for determining compliance with such standards. If DOE bases its standards only on one test metric, then DOE could revise the test procedure to delete the other test metric.

Among machines that are designed and intended for vending 12-ounce cans, there are a variety of dispensing mechanisms and storage arrangements that lead to potentially different refrigerated volumes for different machines with the same “vendible capacity.” Therefore, it may be better for the Department to require measurement of capacity, and set standards based on refrigerated volume.

In addition, EPCA has historically used upper limits on energy consumption as a function of volume for the purposes of establishing energy conservation standards for refrigeration equipment. Energy conservation standards based on volume were established under section 325 of EPCA, 42 U.S.C. 6295(b), and subsequently codified by DOE under § 430.32(a) of 10 CFR Part 430, for residential refrigerators, freezers, and refrigerator-freezers. Also, on October 18, 2005, DOE published a final rule (70 FR 60407) that placed energy conservation standards into the CFR for certain commercial refrigeration equipment as prescribed in EPCACT 2005. These standards are in terms of upper limits on daily energy consumption as a function of refrigerated volume. 10 CFR 431.66(b) Since refrigerated bottled and canned beverage vending machines are defined

by EPCACT 2005 as a type of commercial refrigerator, DOE would be consistent with existing residential and commercial refrigerator standards if it were to use refrigerated volume as a measure of capacity.³

For these reasons, the Department now believes that it should consider refrigerated volume as the measure of capacity, in addition to vendible capacity, for refrigerated bottled or canned beverage vending machines. The Department is therefore including in today’s SNOPR a methodology to measure the refrigerated volume of refrigerated canned or bottled beverage vending machines.

B. Method for Measuring the Refrigerated Volume of Refrigerated Bottled or Canned Beverage Vending Machines

The Department proposes to require measurement of the refrigerated volume of refrigerated bottled or canned beverage vending machines using the methodology in ANSI/AHAM HRF1. As mentioned above, the Department has established energy conservation standards for residential refrigerators, freezers, and refrigerator-freezers in terms of upper limits on energy consumption as a function of volume. The test procedure used to measure the compartment volume for each of these products is ANSI/AHAM HRF1–1979. 10 CFR Part 430, Subpart B, Appendix A1, section 1.2. Likewise, for commercial refrigeration equipment standards that are covered under section 342(c) of EPCA, 42 U.S.C. 6313(c), compartment volume is defined in terms of ANSI/AHAM HRF1–1979. (Section 136(c) of EPCACT 2005; 42 U.S.C. 6313(c)(1)(A) and (B)) Therefore, DOE proposed to incorporate this standard by reference into 10 CFR Part 431 in the July 2006 proposed rule. 71 FR 42208. In addition, under section 1606 of Title 20 of the California Code of Regulations (July 2006), manufacturers of refrigerated bottled or canned beverage vending machines are required to use ANSI/AHAM HRF1–1979 to measure and report the internal volume of multi-package units. Since ANSI/AHAM HRF1 is widely used in the refrigeration industry for measuring refrigerated volume for refrigerated bottled or canned beverage vending machines, the Department proposes to

incorporate it by reference into today’s SNOPR.

The Department notes that ANSI/AHAM HRF1 was revised in 2004. The ANSI/AHAM HRF1–2004 is more readily available than the 1979 version and includes the same relevant information pertaining to the measurement of refrigerated volume. Some language is included in the 2004 version that clarifies the methodology specifically for certain types of household refrigerators (e.g., refrigerators with through-the-door ice and/or liquid dispensers). It also includes some clarifying language in the examples (e.g., the addition of control boxes). However, the 2004 version of the standard retains the same methodology for measuring refrigerated volume. Therefore, the Department proposes to reference the 2004 version of ANSI/AHAM HRF1, instead of the 1979 version, for the measurement of refrigerated volume for refrigerated bottled or canned beverage vending machines.

Specifically, the Department proposes to incorporate by reference section 5.2 of ANSI/AHAM HRF1–2004, excluding subsections 5.2.2.2 through 5.2.2.4 that are not relevant to measuring refrigerated volume for refrigerated bottled or canned beverage vending machines. The Department recognizes that sections 4.2 and 5.2 address the measurement of refrigerated volume in household refrigerators and freezers, respectively, and do not directly address refrigerated bottled or canned beverage vending machines for which no commercial standards exist. Nevertheless, the Department believes that the methodology described in section 5.2 includes methods for the measurement of refrigerated volumes that are applicable to refrigerated bottled or canned beverage vending machines. Further, the Department believes that, although EPCA defines such equipment as a type of commercial refrigerator, the language in section 5.2 for household freezers is more appropriate than the language in section 4.2 for household refrigerators, because the methodology in section 5.2 is more relevant to the type of compartment(s) being measured in a refrigerated bottled or canned beverage vending machine.

As addressed above, the EPCACT 2005 amendments to EPCA require that test procedures for refrigerated bottled or canned beverage vending machines be “based on” ANSI/ASHRAE 32.1–2004. Energy consumption testing represents the bulk of the testing that manufacturers must conduct under this test procedure, while capacity measurements represent a minor

³ Section 135(a)(3) of EPCACT 2005 amends section 321 of EPCA to add subsection 321(40), 42 U.S.C. 6291(40), which defines the term “refrigerated bottled or canned beverage vending machine” as “a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.”

portion. Under today's proposal, the Department would continue to incorporate ANSI/ASHRAE 32.1-2004 by reference into 10 CFR Part 431 for the purpose of measuring energy consumption and capacity, but it proposes to add ANSI/AHAM HRF1-2004 as an additional method for measuring capacity. Thus, DOE is still proposing a test procedure for refrigerated bottled or canned beverage vending machines that is "based on" ANSI/ASHRAE 32.1-2004 as required by EPCA.

C. Method for Measuring the Volume of Commercial Refrigerators, Freezers, and Refrigerator-Freezers

As addressed above, the Department proposes to use the 2004 version of ANSI/AHAM HRF1 for measuring the refrigerated volume of refrigerated bottled or canned beverage vending machines. For all the same reasons, DOE proposes to replace references to ANSI/AHAM HRF1-1979 with references to ANSI/AHAM HRF1-2004 at 10 CFR 431.63(b)(2) of the proposed rule for commercial refrigerators, freezers, and refrigerator-freezers, 71 FR 42208 (July 25, 2006), and in the existing rule for such equipment under 10 CFR 431.66(a).

III. Procedural Requirements

A. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's proposed rule is not a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

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. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, 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 rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

The Department reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Refrigerated bottled and canned beverage vending machines are the subject of voluntary standards and test procedures, and State standards and test procedures, but are not yet covered by DOE's Federal manufacturing standards. The Department expects that the measurements for refrigerated volume in today's proposed rule would not take any more time to conduct than the measurement of vendible capacity proposed in the July 2006 proposed rule. Thus, DOE believes that this proposed rule would not impose significant economic costs on small manufacturers of this equipment. On this basis, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

The Department has 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. Specifically, this rule establishing test procedures will not affect the quality or distribution of energy and, will not result in any environmental impacts, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132, "Federalism"

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 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully 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 developing 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 developing such regulations. 65 FR 13735. The Department examined this proposed rule and determined that it does 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. Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988, "Civil Justice Reform"

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 duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) 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 sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department 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 the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a) and (b). The UMRA 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." The UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. 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>). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements under the UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 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 integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

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 rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516) provides for agencies to review most disseminations of information to the public under guidelines each agency establishes pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002); DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The DOE 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, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

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) of the OMB a statement of energy effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated a final rule 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 Administrator 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 reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Because this proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy, the rule is not a significant energy action. Accordingly, DOE has not prepared a statement of energy effects.

L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91), the DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides, in essence that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The ANSI/AHAM HRF1-2004, "Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers," incorporated in this proposed rule for the measurement of refrigerated volume, is not referenced by EPACT 2005 for refrigerated bottled or canned beverage vending machines. Although Congress in EPACT 2005 did not require DOE to use this industry test procedure as the basis for the test procedures for refrigerated bottled or canned beverage vending machines, the Department believes that it offers a reasonable basis for developing a method for measuring refrigerated volume. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, (i.e., that it was developed in a manner that fully provides for public participation, comment and review). The Department will consult with the Attorney General and the Chairman of the FTC concerning the impact of this test procedure on competition, prior to prescribing a final rule.

IV. Public Participation

A. Public Meeting

The Department will make the entire record of this proposed rulemaking, including the transcript from the September 26, 2006 public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy

of the transcript from the transcribing reporter.

B. Submission of Comments

The Department will accept comments, data, and information about the proposed rule no later than the date provided at the beginning of this SNOPR. Please submit comments, data, and information electronically to <http://www.regulations.gov> or testprocedures_EPACT2005@ee.doe.gov. Please submit electronic comments in 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/TP-05-500 and/or RIN number 1904-AB53, 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 without the information believed to be confidential. The Department will make its own determination about the confidential status of the information.

When determining whether to treat submitted information as confidential, the Department considers: (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) whether the submitting person would suffer competitive injury 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 of the Office of the Secretary

The Secretary of Energy has approved publication of today's supplemental proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products,

Energy conservation test procedures, Incorporation by reference.

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

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the proposed rule that proposed to amend 10 CFR part 431 which was published at 71 FR 42178 on July 25, 2006, is proposed to be amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.63 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraphs (b)(2), and (c)(2)(ii) to read as follows:

Test Procedures

§ 431.63 Materials incorporated by reference.

* * * * *

(b) * * *

(2) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

* * * * *

(c) * * *

(2) * * *

(ii) Anyone can purchase a copy of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” from the American National Standards Institute, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, or <http://www.ansi.org>.

* * * * *

3. Section 431.64 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraph (b)(4) to read as follows:

§ 431.64 Uniform test method for the measurement of energy consumption of commercial refrigerators, freezers, and refrigerator-freezers.

* * * * *

(b) * * *

(4) Determine the volume of each covered commercial refrigerator, freezer, or refrigerator-freezer using the methodology set forth in the ANSI/AHAM HRF1–2004, § 3.21, §§ 4.1 through 4.3, and §§ 5.1 through 5.3.

4. Section 431.293 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraphs (b), (c)(2) and by adding a new (c)(3) to read as follows:

Subpart Q—Refrigerated Bottled or Canned Beverage Vending Machines

Test Procedures

§ 431.293 Materials incorporated by reference.

* * * * *

(b) Test procedures incorporated by reference.

(1) American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 32.1–2004, “Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.”

(2) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

(c) * * *

(2) Obtaining copies of standards. (i) Anyone can purchase a copy of ANSI/ASHRAE Standard 32.1–2004 from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE., Atlanta, GA 30329–2305, (404) 636–8400, or <http://www.ashrae.org>.

(3) Anyone can purchase a copy of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” from the American National Standards Institute, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, or <http://www.ansi.org>.

5. Section 431.294 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraph (b) to read as follows:

§ 431.294 Uniform test method for the measurement of energy consumption of refrigerated bottled or canned beverage vending machines.

* * * * *

(b) Testing and Calculations. (1) The test procedure for energy consumption of refrigerated bottled or canned beverage vending machines shall be conducted in accordance with the test procedures specified in section 4, “Instruments,” the second paragraph of section 5, “Vending Machine Capacity,” section 6, “Test Conditions,” and §§ 7.1 through 7.2.3.2, under “Test Procedures,” of ANSI/ASHRAE Standard 32.1–2004, “Methods of

Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.”

(2) Determine “vendible capacity” of refrigerated bottled or canned beverage vending machines in accordance with the second paragraph of section 5, “Vending Machine Capacity,” of ANSI/ASHRAE Standard 32.1–2004, “Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages,” and measure “refrigerated volume” of refrigerated bottled or canned beverage vending machines in accordance with the methodology specified in § 5.2 (excluding subsections 5.2.2.2 through 5.2.2.4) of the ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

* * * * *

[FR Doc. 06–8432 Filed 9–28–06; 3:20 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, 777–300, and 777–300ER Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 777–200 and 777–300 series airplanes. The original NPRM would have required repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly. The original NPRM resulted from reports of corrosion on the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap, as well as a structural reassessment of the torque tube joint that revealed the potential for premature

fatigue cracking of the torque tube that would not be detected using reasonable inspection methods. This action revises the original NPRM by providing the terminating action for the repetitive inspections of modifying the inboard main flap. This action also revises the original NPRM by specifying prior or concurrent accomplishment, for certain Boeing Model 777–200 series airplanes, of one-time inspections of the flap seal panels for cracking and minimum clearances, and of the torque tubes for damage; and related investigative and corrective actions if necessary. We are proposing this supplemental NPRM to detect and correct corrosion or cracking of the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap. Cracking in these components could lead to a fracture, which could result in loss of the inboard trailing edge flap and consequent reduced controllability of the airplane.

DATES: We must receive comments on this supplemental NPRM by October 30, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address

listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the “original NPRM”) for certain Boeing Model 777–200 and 777–300 series airplanes. The original NPRM was published in the **Federal Register** on February 9, 2006 (71 FR 6687). The original NPRM proposed to require repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly.

Actions Since Original NPRM Was Issued

In the original NPRM we stated that we considered the proposed actions to be interim. We stated that the manufacturer was currently developing a new, improved torque tube made from corrosion-resistant steel with thicker walls; and that installing this new, improved torque tube was expected to address the unsafe condition identified in the original NPRM and eliminate the need for the repetitive inspections and torque tube assembly replacements. Since we issued the original NPRM, the manufacturer has developed the improved torque tube and made it available. We have approved the improved torque tube, and this action follows that approval.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777-57-0054, dated February 23, 2006. The service bulletin describes procedures for modifying the inboard main flap by installing a new corrosion-resistant (CRES) closeout rib fitting assembly; a new CRES torque tube; a new CRES torque tube retainer fitting; certain new components such as isolation straps, washers, and nuts; and assembling the parts using corrosion-inhibiting compound in lieu of grease. The service bulletin also specifies updating the maintenance practices for performing periodic inspections and maintenance of the torque tube splined joints, as given in the Boeing 777 Maintenance Planning Document (MPD) D622W001, Section 2, MPD Item 57-521-00, and Boeing 777 MPD D622W001, Section 9, Structural Significant Items (SSI) 57-53-I10 and SSI 57-53-I11.

Boeing Service Bulletin 777-57-0054 states that, for certain airplanes, the actions specified in Boeing Service Bulletin 777-27-0034, Revision 1, dated April 20, 2006, must be done prior to or concurrently with the modification of the inboard main flap. These prior/concurrent actions are a visual inspection of the flap seal panels for cracking and a measurement for minimum clearances; a close visual inspection of the torque tubes of the main flap for damage (breaks in the finish or finish that is not intact); and corrective actions if necessary. The corrective actions include:

- *For the flap seal panels:* Replacing the panel or doing a permanent repair and trim of the panel before further flight. If the cracking is within certain limits specified in the service bulletin, the service bulletin specifies the option of an immediate temporary repair

followed by eventual permanent repair and trim, or replacement of the panel within 6 months after the temporary repair. If the cracking is outside certain limits specified in the service bulletin, the option for a temporary or permanent repair is not specified; instead, the panel must be replaced. The replacement includes measurement for minimum clearances.

- *For the torque tubes:* Replacing the torque tube or repairing before further flight. The service bulletin specifies doing either a permanent repair or an immediate temporary repair, depending on the extent of the damage. The temporary repair includes the related investigative action of a visual inspection for corrosion, pitting, or cracks; and repair if necessary. If the temporary repair is done, the service bulletin specifies that it must be followed by eventual permanent repair or replacement of the torque tube within 6 months after the temporary repair. If the damage is outside certain limits specified in the service bulletin, the service bulletin states that the torque tube must be replaced rather than repaired, and that the replacement may be done in accordance with the service bulletin or in accordance with instructions given by Boeing.

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

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

Boeing reviewed the contents of the original NPRM and concurs with the contents.

Request to Allow Credit for Original Revision of Service Bulletin

Air Transport Association (ATA), on behalf of American Airlines, and British Airways request that we state that the original issue of Boeing Alert Service Bulletin 777-57A0048, dated September 9, 2004, is acceptable for compliance with the actions in the original NPRM. American Airlines points out that, according to Boeing, either release of the service bulletin is satisfactory.

We agree. We cited only Boeing Service Bulletin 777-57A0048, Revision 1, dated June 9, 2005, as the appropriate source of service information for accomplishing the required actions. Revision 1 of the service bulletin provides additional flexibility in accomplishing the modification specified in the original NPRM, and provides improvements in the

procedure to determine the condition of the spline interface. However, actions accomplished in accordance with the original release of the service bulletin are also acceptable for compliance. We have added paragraph (n) to this supplemental NPRM to give credit for actions accomplished in accordance with the original release of the service bulletin.

Request To Revise Cost Estimate

British Airways states that the statement in the original NPRM that the work hours are negligible provided Boeing Service Bulletin 777-57A0048, Revision 1, is carried out at a scheduled inspection is incorrect because there is no scheduled inspection that calls for the torque tube to be disturbed. British Airways points out that the Boeing figures for accomplishing this service bulletin are 138 hours minimum per airplane.

We infer that British Airways would like us to revise the cost estimate. We disagree. The cost information below describes only the direct costs of the specific action proposed in the original NPRM, which is the detailed inspection for discrepancies of the splined components. In this case, the installation of the isolation strap and the replacement of the torque tube assembly are done during the detailed inspection, when the entire assembly has been completely disassembled. Therefore, the replacement of the torque tube assembly will take less time because no inspections of the originally installed torque tube are required if it is simply being replaced. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental 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, which may vary significantly among operators, are almost impossible to calculate. There is no need to revise the original NPRM in this regard.

Request To Clarify Alternative Methods of Compliance (AMOCs)

British Airways states that, presumably, an AMOC will need to be requested to cover those airplanes on which torque tube rework has been undertaken outside the scope of the instructions given in Boeing Service Bulletin 777-57A0048, Revision 1.

We agree that an AMOC will need to be requested. Paragraph (l) of the original NPRM (new paragraph (o) of

this supplemental NPRM) gives procedures for requesting an AMOC. There is no need to revise the original NPRM in this regard.

FAA’s Determination and Proposed Requirements of This Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Difference Between This Supplemental NPRM and Boeing Service Bulletin 777-27-0034

Where Boeing Service Bulletin 777-27-0034 specifies to replace the torque tube in accordance with that service

bulletin (or instructions from Boeing), this supplemental NPRM would require replacing the torque tube with a new CRES torque tube in accordance with the procedures in Boeing Service Bulletin 777-57-0054.

Clarification of Inspection Terminology

Boeing Service Bulletin 777-27-0034 specifies a visual inspection of the flap seal panels for cracking and measurement for minimum clearances; in this supplemental NPRM we refer to that inspection as a general visual inspection. That service bulletin also specifies a close visual inspection of the torque tubes of the main flap for damage. In this supplemental NPRM we refer to that inspection as a detailed inspection. We have included a definition of both inspection types in notes in this supplemental NPRM.

Explanation of Change to Costs of Compliance

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$65 per work hour to \$80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 353 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of \$80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection for discrepancies of the splined components.	20	None	\$1,600, per inspection cycle.	132	\$211,200, per inspection cycle.
Modification (installing isolation strap and hardware).	Negligible	\$17,156	\$17,156	132	\$2,264,592.
Replacement of torque tube assembly	Negligible ¹	\$24,230	\$24,230	132	\$3,198,360, per replacement cycle.
Modification (terminating action)	32 to 36, depending on airplane configuration.	\$145,659	\$148,219 to \$148,539	132	\$19,564,908 to \$19,607,148.
Prior/concurrent inspection	1	None	\$80	Up to 132 ...	As much as \$10,560.

¹ Provided that the replacement is performed at the same time as a scheduled inspection.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA-2006-23842; Directorate Identifier 2005-NM-145-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 30, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777-200, -300, and -300ER series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777-57-0054, dated February 23, 2006.

Unsafe Condition

(d) This AD results from reports of corrosion on the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap, as well as a structural reassessment of the torque tube joint that revealed the potential for premature fatigue cracking of the torque tube that would not be detected using reasonable inspection methods. We are issuing this AD to detect and correct corrosion or cracking of the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap. Cracking in these components could lead to a fracture, which could result in loss of the inboard trailing edge flap and consequent reduced controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term "service bulletin," as used in paragraphs (g), (h), (i), (j), and (k) of this AD, means Boeing Service Bulletin 777-57A0048, Revision 1, dated June 9, 2005.

(g) Where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Initial Inspection

(h) For all airplanes: Do a detailed inspection for any discrepancy of the splined components of the inboard trailing edge flap, in accordance with the Accomplishment Instructions of the service bulletin. The splined components of the inboard trailing edge flap include the torque tube, closeout rib fitting assembly, carrier beam pillow block fitting assembly, and drive crank support. Discrepancies of the torque tube and closeout rib fitting include light contact wear, corrosion pits, corrosion, cracking, or fracture. Discrepancies of the carrier beam pillow block fitting assembly and drive crank support consist of light contact wear and damage to the cadmium plating. Do the initial inspection at the applicable time specified in Table 7 under paragraph 1.E., "Compliance," of the service bulletin, except as provided by paragraph (g) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

No Discrepancy/Other Specified Actions

(i) If no discrepancy is found during the inspection required by paragraph (h) of this AD, perform all applicable specified actions, including the modification to install a new isolation strap and attachment hardware, in accordance with the Accomplishment Instructions of the service bulletin. Then, repeat the inspection at the applicable time specified in Table 7 under paragraph 1.E., "Compliance," of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive inspection requirements of this paragraph.

Related Investigative/Corrective/Other Specified Actions and Repetitive Inspections

(j) For any discrepancy found during any inspection required paragraphs (h) and (i) of this AD: Before further flight, accomplish all applicable investigative, corrective, and other specified actions, including the modification to install a new isolation strap and attachment hardware, in accordance with the Accomplishment Instructions of the service bulletin. Then, evaluate the spline rework to determine the appropriate repetitive interval, in accordance with the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at the applicable interval specified in Table 7 under paragraph 1.E., "Compliance," of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive inspection requirements of this paragraph.

Replacement of Torque Tube Assembly

(k) For all airplanes: Replace the torque tube assembly with a new torque tube assembly, in accordance with the Accomplishment Instructions of the service bulletin. Do the initial replacement at the applicable compliance time specified in Notes (c) and (d), as applicable, of Table 7 in paragraph 1.E., "Compliance," of the service bulletin, except as provided by paragraph (g) of this AD. Repeat the replacement thereafter at the applicable interval specified in Notes (c) and (d), of Table 7 under paragraph 1.E., "Compliance," of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive replacement requirements of this paragraph.

Modification

(l) For all airplanes: Within 60 months after the effective date of this AD, do the actions in paragraphs (l)(1) and (l)(2) of this AD.

(1) Modify the inboard main flap in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-57-0054, dated February 23, 2006. Doing this modification terminates the repetitive requirements of paragraphs (i), (j), and (k) of this AD.

(2) Revise the FAA-approved maintenance inspection program for performing periodic inspections and maintenance of the torque

tube splined joints in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-57-0054, dated February 23, 2006.

Concurrent Requirement

(m) For Boeing Model 777-200 series airplanes, as identified in Boeing Service Bulletin 777-27-0034, Revision 1, dated April 20, 2006: Prior to or concurrently with the actions in paragraph (l) of this AD, do a general visual inspection of the flap seal panels for cracking and minimum clearances, and a detailed inspection of the torque tubes for damage; and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-27-0034, Revision 1, dated April 20, 2006; except where the service bulletin specifies the corrective action of replacing the torque tube, the replacement must be done in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-57-0054, dated February 23, 2006.

Note 2: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Actions Done In Accordance With Previous Issues of Service Bulletins

(n) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 777-27-0034, dated February 11, 1999; or Boeing Service Alert Bulletin 777-57A0048, dated September 9, 2004; are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on September 22, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E6-16198 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25965; Directorate Identifier 2006-NM-127-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes Equipped With General Electric CF6-50 Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6-50 engines. The existing AD currently requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. This proposed AD would require one-time inspections of the directional pilot valve (DPV), the rocker arm and associated hardware, and corrective actions if necessary; reactivation of both thrust reversers; and repetitive inspections of the DPV and the associated control mechanism of the thrust reversers for incorrect assembly or excessive wear, and corrective actions if necessary. Accomplishing all of the proposed actions would allow the removal of the AFM limitations in the existing AD. This proposed AD results from reports indicating that the DPV was assembled incorrectly; further investigation revealed excessive wear on certain correctly assembled DPVs and the associated control mechanism. We are proposing this AD to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 2, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact 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, FAA, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2006-25965; Directorate Identifier 2006-NM-127-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

On April 19, 2002, we issued AD 2002-08-51, amendment 39-12728 (67 FR 21569, May 1, 2002), for Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6-50 engines. That AD requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. That AD resulted from the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

Actions Since Existing AD Was Issued

The actions required by AD 2002-08-51 are considered "interim action" until final action was identified. We have determined that further rulemaking action to address that final action is necessary; this proposed AD follows from that determination. Since AD 2002-08-51 was issued, Airbus issued service information that provides instructions for reactivating the thrust reversers through the implementation of a program that involves one-time and follow-on repetitive inspections, and parts replacement if necessary. We approved this program as an alternative method of compliance (AMOC) with the requirements of AD 2002-08-51, allowing for reactivation of the thrust reversers and removal of the AFM limitations.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300-78A0024, dated May 29, 2002. The AOT describes using the procedures in the Airbus A300 Airplane Maintenance Manual to reactivate the

thrust reversers after accomplishing an inspection for correct assembly or excessive wear of the directional pilot valve (DPV) and excessive wear of the DPV rocker arm, and corrective actions (parts replacement) if necessary. Accomplishing these actions would eliminate the need for the AFM limitations.

Airbus has also issued Service Bulletin A300-78-0025, Revision 01, including Appendix 01, dated February 16, 2005. The service bulletin describes procedures for repetitive detailed visual inspections of the DPV and the associated control mechanism of the thrust reverser for incorrect assembly or excessive wear, and corrective actions if necessary. The inspections are done following reactivation of the thrust reversers. The corrective actions include repair of any discrepancies in the DPV and replacing any damaged parts in the associated control mechanism.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, mandated the Airbus service information and issued French airworthiness directives 2002-293(B), dated June 12, 2002; and F-2005-208, dated December 21, 2005, to ensure the continued airworthiness of these airplanes in France.

The Airbus AOT refers to Middle River Aircraft Systems CF6-50 Alert Service Bulletin 78A3040, Revision 2, dated June 18, 2004, (including Honeywell Service Bulletin 121332-78-1620, Revision 2, dated June 18, 2004), as an additional source of service information for accomplishing the inspections. The Airbus service bulletin refers to Middle River Aircraft Component Maintenance Manual 78-31-06, Revision 10, dated May 31, 2005, as an additional source of service information for replacing defective components.

FAA's Determination and Requirements of the Proposed AD

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

This proposed AD would supersede AD 2002-08-51 and would retain the requirements of the existing AD. This proposed AD would also require inspections of the DPV and the rocker arm and associated hardware; reactivation of both thrust reversers; and repetitive inspections of the DPV and the associated control mechanism of the thrust reversers for incorrect assembly or excessive wear, and corrective actions if necessary. Accomplishing the inspections of the DPV and the rocker arm and associated hardware, followed by the reactivation of the thrust reversers, would eliminate the need for the AFM limitations required by the existing AD.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Airbus service bulletin, and the "inspection" required by the French airworthiness directives, are referred to as a "detailed inspection." We have included the definition for a detailed inspection in a note in the proposed AD.

Change to Existing AD

This proposed AD would retain all requirements of AD 2002-08-51. Since AD 2002-08-51 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002-08-51	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).

Costs of Compliance

This proposed AD would affect about 30 airplanes of U.S. registry.

The actions that are required by AD 2002-08-51, and retained in this proposed AD take about 3 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the currently required actions is \$240 per airplane.

The new proposed inspection and reactivation specified in Airbus AOT A300-78A0024 would take about 9 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the new inspection and reactivation specified in this proposed AD for U.S.

operators is \$21,600, or \$720 per airplane.

The new proposed inspections specified in Airbus Service Bulletin A300-78-0025 would take about 7 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the new inspections specified in this proposed AD for U.S. operators is \$16,800, or \$560 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12728 (67 FR 21569, May 1, 2002) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–25965; Directorate Identifier 2006–NM–127–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 2, 2006.

Affected ADs

(b) This AD supersedes AD 2002–08–51.

Applicability

(c) This AD applies to Airbus Model A300 airplanes, certificated in any category, equipped with General Electric CF6–50 engines.

Unsafe Condition

(d) This AD results from reports indicating that the directional pilot valve (DPV) was assembled incorrectly; further investigation revealed excessive wear on certain correctly assembled DPVs and the associated control mechanism. We are issuing this AD to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2002–08–51*Thrust Reverser Deactivation and Airplane Flight Manual (AFM) Revision*

(f) Within 72 clock hours after May 6, 2002 (the effective date of AD 2002–08–51), accomplish paragraphs (f)(1) and (f)(2) of this AD.

(1) Deactivate both thrust reversers according to Airbus All Operators Telex A300/78A0023, dated April 5, 2002.

(2) Revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

“When the runway is wet or contaminated, reduce by five percent the corrected

acceleration-stop distance resulting from the airplane flight manual takeoff performance analysis.

(**Note:** This supersedes any relief provided by the Master Minimum Equipment List (M MEL).)”

New Requirements of This AD*Inspections and Corrective Actions*

(g) Within 6 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD in consecutive order, in accordance with the procedures specified in Airbus All Operators Telex (AOT) A300–78A0024, dated May 29, 2002, which ends the requirements in paragraph (f) of this AD.

(1) Do a detailed inspection of the DPV on each thrust reverser for incorrect assembly, incorrect diameter, or excessive wear, by doing all the applicable actions, including all applicable corrective actions. All applicable corrective actions must be done before further flight.

(2) Do a detailed inspection of the rocker arm of the DPV for excessive wear by doing all the applicable actions, including all applicable corrective actions. All applicable corrective actions must be done before further flight.

(3) Reactivate both thrust reversers and do a one-time operational test before further flight.

Note 1: Airbus AOT A300–78A0024, dated May 29, 2002, refers to Middle River Aircraft Systems CF6–50 Alert Service Bulletin 78A3040, Revision 2, dated June 18, 2004 (including Honeywell Service Bulletin 121332–78–1620, Revision 2, dated June 18, 2004), as an additional source of service information for accomplishing the inspections.

Note 2: For the purposes of this AD, a detailed inspection is: “An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.”

Repetitive Inspections/Corrective Actions

(h) Within 18 months after accomplishing paragraph (g) of this AD: Do a detailed inspection of the DPV and the associated control mechanism of the thrust reverser for incorrect assembly or excessive wear, by doing all the applicable actions, including all applicable corrective actions, in accordance with Airbus Service Bulletin A300–78–0025, Revision 01, excluding Appendix 01, dated February 16, 2005. All applicable corrective actions must be done before further flight. Repeat the inspection thereafter at intervals not to exceed 8,000 flight hours.

Note 3: Airbus Service Bulletin A300–78–0025, Revision 01, dated February 16, 2005, refers to Middle River Aircraft Systems Component Maintenance Manual 78–31–06, Revision 10, dated May 31, 2005, as an additional source of service information for replacing defective components.

Actions Accomplished Previously

(i) Inspections and corrective actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–78–0025, dated July 21, 2004, is acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(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) AMOCs approved previously in accordance with AD 2002–08–51, are not approved as AMOCs with this AD.

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

Related Information

(k) French airworthiness directives 2002–293(B), dated June 12, 2002, and F–2005–208, dated December 21, 2005, also address the subject of this AD.

Issued in Renton, Washington, on September 22, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16201 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2006–25966; Directorate Identifier 2006–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310 airplanes. This proposed AD would require doing repetitive inspections for any missing, damaged, or incorrectly installed wiper rings in the splined couplings of the flap transmissions shafts; inspections for any missing, damaged, or incorrectly installed rubber gaiters and straps on the sliding bearing/plunging joints of the flap transmission; and corrective action if necessary. This proposed AD

results from reviews in which the manufacturer determined that the splined couplings and sliding bearings of the flap transmission system could be affected by corrosion and wear. We are proposing this AD to detect and correct damaged, missing, or incorrectly installed components of the flap transmission system, which could result in reduced functional integrity of the flap transmission system and consequent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by November 2, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact 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, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-25966; Directorate Identifier 2006-NM-149-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that an unsafe condition may exist on all Airbus Model A310 airplanes. The EASA advises that the manufacturer conducted high-time equipment reviews as part of the Model A310 aircraft design service goal extension work. The manufacturer determined that the splined couplings and sliding bearings of the flap transmission system could be affected by corrosion and wear. In addition, the manufacturer determined that the protective components of the flap transmission system could be defective. The protective components include the wiper rings and rubber gaiters. This condition, if not corrected, could result in reduced functional integrity of the flap transmission system and consequent reduced control of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A310-27-2099, dated February 17, 2006. The service bulletin describes

procedures for doing an inspection for any missing, damaged, or incorrectly installed wiper rings in the splined couplings of the flap transmission shafts; an inspection for any missing, damaged, or incorrectly installed rubber gaiters and straps on the sliding bearing/plunging joints of the flap transmission; and corrective action if necessary. The corrective action is replacing any damaged, missing, or incorrectly installed wiper rings, rubber gaiters, or straps with serviceable components. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006-0111, dated May 12, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France 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. As described in FAA Order 8100.14A, "Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness," dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

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

Clarification of Type of Inspection

The service bulletin specifies to "visually inspect" the flap transmission shafts. We have determined that the procedures in the service bulletin should be described as a "general visual inspection." Note 1 has been included in this proposed AD to define this type of inspection.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	3	\$80	\$240	3	\$15,120, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2006-25966; Directorate Identifier 2006-NM-149-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 2, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A310 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reviews in which the manufacturer determined that the splined couplings and sliding bearings of the flap transmission system could be affected by corrosion and wear. We are issuing this AD to detect and correct damaged, missing, or incorrectly installed components of the flap transmission system, which could result in reduced functional integrity of the flap transmission system and consequent reduced control 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.

Initial and Repetitive Inspections

(f) Within 2,500 flight cycles after the effective date of this AD: Do a general visual inspection for any missing, damaged, or incorrectly installed wiper rings in the splined couplings of the flap transmission shafts; and a general visual inspection for any missing, damaged, or incorrectly installed rubber gaiters and straps on the sliding bearing/plunging joints of the flap transmission; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310-27-2099, dated

February 17, 2006. Repeat the inspections thereafter at intervals not to exceed 2,500 flight cycles.

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

Corrective Actions

(g) If any damaged, missing or incorrectly installed wiper rings, rubber gaiters, or straps are found during any inspection required by paragraph (f) of this AD: Within 400 flight cycles after accomplishing the inspection, replace the applicable component with a serviceable component in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310-27-2099, dated February 17, 2006.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) The European Aviation Safety Agency's airworthiness directive 2006-0111, dated May 12, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 22, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-16204 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2006-25973; Directorate Identifier 2006-NM-178-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 777 airplanes. This proposed AD would require repetitive measurements of the freeplay of the right and left elevators, rudder, and rudder tab, and related investigative and corrective actions if necessary. This proposed AD would also require repetitive lubrications of the elevator, rudder, and rudder tab components. This proposed AD results from reports of freeplay-induced vibration of unbalanced control surfaces. Excessive freeplay of control surfaces can cause unacceptable airframe vibration during flight. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are proposing this AD to prevent flutter, which can cause damage to the control surface structure and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 17, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-25973; Directorate Identifier 2006-NM-178-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of freeplay-induced vibration of unbalanced control surfaces on Boeing Model 727, 737, 757,

and 767 airplanes. Excessive corrosion and wear of components and/or interfaces allows excessive freeplay movement of the control surfaces and can cause excessive vibration of the airframe during flight. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. Flutter can cause damage to the control surface structure during flight. This condition, if not corrected, could result in loss of control of the airplane.

The control surfaces on Model 777 airplanes are similar to those on the affected Model 727, 737, 757, and 767 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006. The service bulletin describes procedures for measuring the freeplay of the right and left elevators, rudder, and rudder tab. If the freeplay is greater than the given limit, the service bulletin specifies accomplishing related investigative and corrective actions to decrease the freeplay. The related investigative actions include inspecting for worn parts, which include hinges, bolts, actuator fittings, related bushings, power control unit (PCU) reaction links, kick link bearings, and hinge bolts. The corrective actions include replacing or repairing any worn parts; and repeating the freeplay measurement until the freeplay is less than the specified limits. The service bulletin also describes procedures for accomplishing repetitive lubrications of the elevator, rudder, and rudder tab components. Those components include hinge bearings for the elevators, rudder, and rudder tab; and reaction links and PCU rod ends for the elevators and rudder. The service bulletin also specifies doing the freeplay measurement before the lubrication, when the lubrication and freeplay measurement of a part are done during the same maintenance period.

For the initial measurement of the freeplay of the right and left elevators, rudder, and rudder tab, the service bulletin specifies that the measurements be done within 36 months after the date of the service bulletin, or within 36 months after the date of issuance of the original standard certificate of airworthiness or original export certificate of airworthiness, whichever occurs later. The service bulletin specifies a measurement repeat interval of 12,000 flight hours, or 36 months, whichever occurs first. The service

bulletin also specifies that any corrective actions be done before further flight.

For the initial lubrication of the elevator, rudder, and rudder tab components, the service bulletin specifies that the lubrications be done within 16 months after the date of the service bulletin, or within 16 months after the date of issuance of the original standard certificate of airworthiness or original export certificate of airworthiness, whichever occurs later. The service bulletin specifies a

lubrication repeat interval of 5,000 flight hours, or 16 months, whichever occurs first.

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

FAA’s Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same

type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 695 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of \$80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Measurement of elevators, per measurement cycle.	4	\$320, per measurement cycle	145	\$46,400, per measurement cycle.
Lubrication of elevators, per lubrication cycle.	17	\$1,360, per lubrication cycle	145	\$197,200, per lubrication cycle.
Measurement of rudder, per measurement cycle.	4	\$320, per measurement cycle	145	\$46,400, per measurement cycle.
Lubrication of rudder, per lubrication cycle.	7	\$560, per lubrication cycle	145	\$81,200, per lubrication cycle.
Measurement of rudder tab, per measurement cycle.	3	\$240, per measurement cycle	145	\$34,800, per measurement cycle.
Lubrication of rudder tab, per lubrication cycle.	5	\$400, per lubrication cycle	145	\$58,000, per lubrication cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–25973; Directorate Identifier 2006–NM–178–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of freeplay-induced vibration of unbalanced control surfaces. Excessive freeplay of control surfaces can cause unacceptable airframe vibration during flight. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent flutter, which can cause damage to the control surface structure and consequent loss of control 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.

Repetitive Measurements

(f) At the applicable times specified in Tables 1, 2, and 3 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, except as provided by paragraph (i) of this AD: Measure the freeplay of the right and left elevators, rudder, and rudder tab; and do all related investigative and corrective actions before further flight; by accomplishing all the actions specified in Parts 1, 3, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, as applicable. Repeat the measurements and related investigative and corrective actions thereafter at the interval specified in Table 1, 2, or 3 of the service bulletin, as applicable.

Repetitive Lubrications

(g) At the applicable times specified in Tables 1, 2, and 3 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, except as provided by paragraph (i) of this AD: Lubricate the elevator components, rudder components, and rudder tab components, by accomplishing all the actions specified Parts 2, 4, and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, as applicable. Repeat the lubrications thereafter at the interval specified in Table 1, 2, or 3 of the service bulletin, as applicable.

Concurrent Compliance Times

(h) If a freeplay measurement of a specified part required by paragraph (f) of this AD and a lubrication of the same part required by paragraph (g) of this AD are due at the same time or will be accomplished during the same maintenance visit, the freeplay measurement and all related investigative and corrective actions must be done before the lubrication is accomplished.

Exceptions to Compliance Times

(i) Where Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, recommends an initial compliance threshold of "Within 36 months after the date on this service bulletin" for Parts 1, 3, and 5 of the service bulletin, this AD requires an initial compliance threshold of "within 36 months after the effective date of this AD." Where Boeing Special Attention Service Bulletin 777-27-0062, dated July 18, 2006, recommends an initial compliance threshold of "Within 16 months after the date on this service bulletin" for Parts 2, 4, and 6 of the service bulletin, this AD requires an initial compliance threshold of "within 16 months after the effective date of this AD."

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the

authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

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

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

Ali Bahrami,

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

[FR Doc. E6-16307 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****18 CFR Part 388**

[Docket No. RM06-23-000]

**Critical Energy Infrastructure
Information**

Issued September 21, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations to: Allow an annual certification for repeat requesters of Critical Energy Infrastructure Information (CEII); allow an authorized representative to file an executed non-disclosure agreement; make the Freedom of Information Act (FOIA), 5 U.S.C. 552 (2000) fee schedule applicable to CEII requests; provide CEII appeal rights that are compatible with FOIA appeal rights; grant landowners the right to obtain alignment sheets directly from Commission staff; and abolish the non-Internet public category of information. This notice of proposed rulemaking also seeks comments on the CEII portions of various forms and reports submitted to the Commission. The proposed rule offers a more efficient process for handling CEII requests and provides submitters of CEII with guidance on what materials the Commission accepts as containing CEII.

DATES: Comments are due November 2, 2006. Reply Comments are due November 17, 2006.

ADDRESSES: You may submit comments, identified by Docket No. RM06-23-000, by one of the following methods:

- *Agency Web site:* <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Teresina A. Stasko, Office of the General Counsel, GC-13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; 202-502-8317.

SUPPLEMENTARY INFORMATION:**Introduction**

1. In the three years since the issuance of Order No. 630, the Commission has continually monitored and evaluated the effectiveness of the Critical Energy Infrastructure Information (CEII) process. Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); *order on reh'g*, Order No. 630-A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). The most recent review indicates that changes are needed to assure the rules work in the manner intended. As explained below, the Commission seeks comments on: (1) Revisions to its regulations regarding CEII requests; (2) the limited portions of various forms and reports the Commission now defines as containing CEII; and (3) its proposal to abolish the non-Internet public (NIP) designation. In a final rule and notice of regulatory changes issued concurrently with this notice of proposed rulemaking, the Commission: (1) Makes the following changes to its regulations (a) the definition of CEII is clarified, and (b) requesters are required to submit executed non-disclosure agreements (NDA) with their requests; (2) provides notice that, for CEII requests, the notice and opportunity to comment on a request will be combined with the notice of release; and (3) reiterates its requirement that submitters segregate CEII from other information and file as CEII only information which

truly warrants being kept from public access.

2. The proposed rule (1) offers a more efficient process for handling CEII requests and (2) provides submitters with guidance on what materials the Commission accepts as containing CEII.

Background

3. The Commission began its efforts with respect to CEII shortly after the attacks of September 11, 2001. *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). The Commission's initial step was to remove from its public files and Internet page documents such as oversized maps that were likely to contain detailed specifications of facilities licensed or certified by the Commission, directing the public to request such information pursuant to the Freedom of Information Act (FOIA) process detailed in 5 U.S.C. 552 (2000) and in the Commission's regulations at 18 CFR 388.108 (2001). In September 2002, the Commission issued a notice of proposed rulemaking regarding CEII, which proposed an expanded definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. Notice of Rulemaking and Revised Statement of Policy, 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued its final rule on CEII on February 21, 2003, defining CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. Order No. 630, 68 FR 9857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630-A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Order No. 630-A, 68 FR 46456, FERC Stats. & Regs. ¶ 31,147. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of NIP information, a term first described in Order No. 630, and added the aforementioned commitment to review the effectiveness of the new process after six months. Also on July 23, 2003, the Commission issued Order No. 643, which revised the Commission's regulations to require companies to make certain information available directly to the public under certain circumstances. These revisions were necessary to conform the regulations to Order No. 630. Order No. 643, 68 FR 52089, FERC Stats. & Regs. ¶ 31,149

(2003). In Order No. 662, the Commission modified its CEII regulations to ease the burden on agents of owners or operators of energy facilities that are seeking CEII relating to the owner/operator's own facility. The rule also simplified Federal agencies' access to CEII. Order No. 662, 70 FR 37031, FERC Stats. & Regs. ¶ 31,189 (2005).

Proposed Revisions to Regulations

A. Section 388.113—Accessing Critical Energy Infrastructure Information

4. The Commission proposes to revise § 388.113 of its regulations to allow an annual certification for repeat requesters, *i.e.*, repeat requesters would not be required to file a new non-disclosure agreement (NDA) with each subsequent request. The current regulation sets forth a process where a requester provides to the CEII Coordinator detailed information about the requester and his or her need for the information, which the CEII Coordinator uses in determining whether to release the information. The proposed regulation would provide that a requester provide such detailed information with an initial request. Once the CEII Coordinator determines that the requester does not pose a security risk, the requester would not have to provide such detailed information with subsequent requests during the calendar year. This would decrease the processing time of requests as Commission staff would not have to verify the requester with subsequent requests. It is important to note that the CEII Coordinator would continue to carefully consider submitters' responses that identify security risks associated with releasing CEII to particular requesters.

5. With each subsequent request, the requester would still be required to provide detailed information as to why he or she needs the information. Such need would be implicated, for example, if the requester is an intervener in a proceeding or a landowner affected by a proposed facility. Such individuals may require access to information in order to participate meaningfully in the proceeding. The requester would also be required to attest that the information supplied with an initial request has not changed.

6. The Commission also proposes to revise § 388.113 of its regulations to allow an authorized representative of an organization to execute an NDA on behalf of all that organization's employees. The Commission would verify an organization and require that the organization verify its own users. In

the event of an unauthorized disclosure of CEII by a member or employee of the organization, the Commission will hold the authorized representative and the entity accountable and take all action available to the Commission to deal with the violation. Repeat requests would be subject to the annual certification described above.

7. The Commission further proposes to revise § 388.113 of its regulations to include a fee provision. Commission staff currently expends valuable time and resources searching, reviewing, and copying documents responsive to CEII requests. The current regulations would be modified to follow the fee schedule used for FOIA requests.

8. Another regulatory change the Commission proposes is to revise 18 CFR § 388.113(d)(3)(ii). Currently, the CEII Coordinator, or his or her designee, issues a delegated order in response to a CEII request. Section 388.113(d)(3)(ii) provides that this decision is subject to rehearing pursuant to § 375.713 of the Commission's regulations. The Commission proposes that CEII determinations no longer be subject to rehearing. As explained below, CEII requests would be processed in a manner similar to other requests for non-public information.

9. The September 11, 2001 attacks prompted the Commission to remove from easy public access previously public documents that detail the specifications of proposed or existing energy facilities licensed or certificated by the Commission. Before the attacks, the Commission was never faced with such security issues. Therefore, in these early days of CEII, the Commission sought to reconcile its regulatory responsibilities under its enabling statutes and Federal environmental laws with the need to protect the safety and well being of American citizens from attacks on our nation's energy infrastructure. To that end, the Commission allowed the CEII Coordinator, or her designee, to make CEII determinations by delegated orders, which are subject to rehearing.

10. In light of over three years experience processing CEII requests, the Commission now finds that CEII determinations need not be made by delegated orders. In making this determination, the Commission is in no way compromising the security of the information or unduly restricting the public access to it.

11. Under existing procedures, a request for rehearing concerning a CEII determination is reviewed by the entire Commission and is then subject to review by the appropriate appellate court. *See* 18 CFR 385.713 (2006). Other

than CEII requests, when the Commission makes a determination regarding the release of non-public information, it is not subject to rehearing. For example, by statute, when the agency informs a requester of non-public information, *i.e.* a FOIA requester, of the reason(s) for withholding information, the requester is limited to filing an administrative appeal to the Commission's General Counsel, with no right to a Commission rehearing. This promotes judicial economy and preserves Commission resources. If the requester is dissatisfied with the General Counsel's determination, the requester must seek a *de novo* review in a U.S. District Court prior to going before an appellate court. 18 CFR 388.108(c)(1), 388.110 (2006).

12. The Commission emphasizes that CEII, like other non-public documents, is maintained in the Commission's non-public files pursuant to § 388.107 of its regulations. The Commission's determination to place CEII or other non-public information in its non-public files or to release such information need not be done by a Commission order which allows the right to rehearing. Rather, a release of CEII should be processed similarly to the release of other non-public information specified in § 388.107 of its regulations. Therefore, the Commission proposes that the CEII Coordinator, or her designee, issue a letter providing notice of a determination to grant or deny a CEII request. As CEII by definition is exempt from release under the FOIA, the Commission's determination to release CEII is a voluntary one that is analogous to a discretionary release under the FOIA. Accordingly, a dissatisfied CEII requester may seek the information pursuant to the FOIA and may ultimately pursue a remedy in district court pursuant to the court's jurisdiction under the FOIA. A dissatisfied submitter may seek injunctive relief similar to that sought in a reverse FOIA action.¹ Thus, even though the Commission would no longer subject CEII determinations to rehearing, comparable administrative and judicial remedies remain available.

13. In revised § 388.113(d), the Commission proposes to grant access to alignment sheets filed pursuant to

§ 380.12(3) of the Commission's regulations to landowners for the route across or in the vicinity of their property. Such landowners would be able to obtain alignment sheets from the CEII Coordinator without submitting an NDA. Thus, landowners will not be restricted from discussing the information shown in the detailed alignment sheets with others even though the detailed alignment sheets are CEII. The Commission encourages landowners to first request this information from applicants.

B. Section 388.112—Requests for Special Treatment of Documents Submitted to the Commission

14. By way of background, in Order No. 630, the Commission explained that it considers the following types of gas and hydropower location information outside the definition of CEII: (1) USGS 7.5-minute topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. In order to alleviate concerns about making this information so easily available, the Commission instructed filers to segregate this non-CEII location information into a separate volume or appendix, clearly label it NIP, and submit it with instructions that it not be placed on the Internet. The information remained, and still remains, publicly available through the Public Reference Room.

15. The NIP designation has resulted in much confusion, with many individuals utilizing the CEII or the FOIA procedures in an effort to obtain NIP information. The Commission proposes to abolish the NIP designation. The Commission has concluded that there is little to be gained by protecting information that can be gleaned from a visual inspection of the facility, or that is otherwise easily attainable from other sources, such as the United States Geological Survey or commercial mapping firms. See 67 FR 57994, 58000. Most of the information designated as NIP is readily available on the Internet. For companies that currently file maps showing simply the location of pipeline and aboveground facilities as NIP, they would file these documents as public. For companies that file detailed alignment sheets pursuant to § 380.12(c)(3) of the Commission's regulation, they would all be filed as CEII. We note that this proposed change

would be prospective and any documents currently filed as NIP would retain that designation.

Proposed Revisions to CEII Designation for Information Collected

16. The CEII process was not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission requires submitters to segregate public information from CEII and to file as CEII only information which truly warrants being kept from ready public access. To this end, the Commission emphasizes that the Commission's regulation at 18 CFR 388.112(b)(1) requires that submitters provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.

17. The Commission retains its concern for CEII filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of an application where information is mislabeled as CEII. The Commission offers the following proposals on how various types of documents should be filed. We note that these proposals are for prospective filings. All documents currently filed at the Commission will retain their current designations. The Commission directs the Director of the Office of External Affairs to post on the Commission's Web site, from time to time, clarifying guidelines regarding CEII.

A. Guidelines for Filing Resource Report 13

18. These proposed guidelines provide instructions on how to file Resource Report 13. In the Commission's experience, Resource Report 13 contains public information, CEII, and privileged information. It is imperative that the information submitted be filed in its proper designation. Pursuant to 388.112(b) of the Commission's regulations, these designations must be clearly labeled and filed as separate volumes. The Commission emphasizes that submitters must segregate public information, CEII, and privileged information and file them in separate volumes. Further, submitters must only file as CEII or privileged information which truly warrants exemption from ready public access.

¹ The Court of Appeals for the District of Columbia Circuit has defined a "reverse" FOIA action as one in which the "submitter of information—usually a corporation or other business entity" that has supplied an agency with "data on its policies, operations or products—seeks to prevent the agency that collected the information from revealing it to a third party in response to the latter's FOIA request." *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1133 n.1 (D.C. Cir. 1987).

1. Public

19. The filing of Resource Report 13 should include a public volume for posting on eLibrary. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details or design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public aspects of Resource Report 13 include design, engineering, and operating philosophies, as well as general descriptions of hazard detection and control.

2. CEII

20. Only limited information meets the CEII category and should be filed as such. CEII only includes specific engineering and detailed design information about liquefied natural gas facilities, components, tanks, and systems. Examples of CEII include: Detailed piping and instrumentation diagrams; equipment and tank detail drawings; and detailed hazard detection and control location specifics.

3. Privileged

21. In general, manufacturer's proprietary or business confidential design information, and cultural resource reports are examples of privileged documents. Privileged documents are generally documents that are exempt from release pursuant to an act of Congress. For example, cultural resources may be exempt from release pursuant to the National Historic Preservation Act and should be filed as privileged. Also, material which a submitter can justify as exempt from public release pursuant to FOIA exemption 4 should be filed under this criterion. In order to qualify for Exemption 4 protection, the information must be (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. Generally, in order to be "confidential" for purposes of Exemption 4, disclosure of the information must either impair the government's ability to obtain similar information in the future, or cause substantial harm to the competitive position of the submitter of the information. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

B. Guidelines for Filing Natural Gas Pipeline Flow Diagrams and Associated Information

22. These proposed guidelines provide instructions on how to file natural gas pipeline flow diagrams and associated information including the

diagrams filed in Exhibits G and G-1 of pipeline certificate applications, Exhibit V of abandonment applications, FERC Form 567, and other flow diagrams submitted for the analysis of gas pipeline applications.

23. In general, natural gas pipeline flow diagrams are considered CEII. However, supporting information submitted with these flow diagrams often contains information that should be public. In the Commission's experience, information filed with the flow diagrams contains public information, CEII, and privileged information. Again, it is crucial that the information submitted be filed in its proper designation and in separate, clearly labeled volumes. *See* 18 CFR 388.112(b) (2006).

1. Public

24. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details and design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public information include design assumptions, engineering and operating philosophies, most design specifications of equipment and pipelines, and narrative descriptions of pipeline operations.

2. CEII

25. CEII only includes specific engineering and detailed design information about pipeline facilities, components, and equipment. Examples of CEII include detailed natural gas flow diagrams filed in Exhibits G and G-1 of pipeline certificate applications, Exhibit V of abandonment applications, and FERC Form No. 567. Also, pipeline computer simulation models may be considered CEII unless they contain proprietary or business confidential information, in which case they should be filed as privileged.

3. Privileged

26. In general, documents containing manufacturer's proprietary or business confidential design information are examples of privileged documents. Material which a submitter can justify as exempt from public release pursuant to FOIA exemption 4 should be filed under this criterion.

C. Guidelines for Filing Documents Pertaining to the Commission's Division of Dam Safety and Inspections

27. These proposed guidelines provide further instructions on how to file documents relating to hydropower projects with the Commission's Division

of Dam Safety and Inspections (D2SI). Some D2SI documents contain only public information and some only CEII. In general, D2SI documents are not filed with a claim of privilege.

1. Public

28. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details and design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public information include general design, engineering, and operating philosophies.

2. CEII

29. Only limited information meets this category and should be filed as CEII. CEII only includes engineering, security, and detailed design information about proposed or existing critical infrastructure. Examples of CEII include detailed drawings and specifications, numerical analyses in inspection reports, dam safety and technical reports, emergency action plans, hazard classification, construction design reports, public safety plans, and extreme event reports.

D. Guidelines for Filing Documents Pertaining to the Commission's Division of Hydropower Licensing

30. These proposed guidelines provide further instructions on how to file documents relating to applications to license hydropower projects with the Commission's Division of Hydropower Licensing (DHL). In hydropower licensing, only Exhibit F is considered to be CEII material. Exhibit F consists of design drawings of critical energy infrastructure information and a Supporting Design Report. Exhibit F is contained in applications for hydropower licenses. All other DHL documents contain only public information. In general, DHL documents are not filed with a claim of privilege.

E. Guidelines for Filing FERC Form 715 Annual Transmission Planning and Evaluation Report

31. These proposed guidelines provide further instructions on how to file parts of the FERC Form 715, Annual Transmission Planning and Evaluation Report (Form 715). The Form 715 is comprised of the following parts: Part 1, Identification and Certification; Part 2, Power Flow Base Cases; Part 3, Transmitting Utility Maps and Diagrams; Part 4, Transmission Planning Reliability Criteria; Part 5, Transmission Planning Assessment Practices; and Part 6, Evaluation of Transmission System

Performance. Some parts of the Form 715 contain public information and some contain CEII. In general, Form 715 does not contain privileged information.

1. Public

32. In general, narratives such as descriptions of facilities and processes are public. The information found in Part 1 contains the filer's identification and contact information. This information should be filed publicly. Similarly, Parts 4 and 5 contain generic criteria used in evaluating and testing the filer's system. This generic information does not qualify as CEII and should be filed publicly.

2. CEII

33. CEII only includes engineering, security, and detailed design information about proposed or existing infrastructure. Information in Part 2 provides an electrical model and analysis of the filer's actual transmission system. Part 3 provides detailed one-line diagrams and geographic location and identification of all system components. Part 6 provides details of potential weaknesses of the filer's transmission system including possible solutions. These three parts contain CEII and should be filed as such.

Information Collection Statement

34. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. See 5 CFR 1320.12 (2006). This notice of proposed rulemaking does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

Environmental Analysis

35. 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. Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This notice of proposed rulemaking is procedural in

nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

36. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.² Most companies to which the rules proposed herein would apply, if finalized, would not fall within the RFA's definition of small entity.³ Consequently, the rules proposed herein, if finalized, will not have a "significant economic impact on a substantial number of small entities."

Public Comments

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before November 2, 2006. Comments must refer to Docket No. RM06-23-000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

38. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

² 5 U.S.C. 603 (2000).

³ 5 U.S.C. 601(3)(2000), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines, for example, a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. NAICS defines a natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million dollars for the preceding year. 13 CFR 121.201.

39. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

Document Availability

40. 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.

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

42. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 388

Confidential business information; Freedom of information.

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 388, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

2. Revise § 388.109(b) introductory text to read as follows:

§ 388.109 Fees for record requests.

* * * * *

(b) *Fees for records not available through the Public Reference Room*

(FOIA or CEII requests). The cost of duplication of records not available in the Public Reference Room will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of requests for fee waiver or reduction are provided in § 388.110.

* * * * *

3. In § 388.112, paragraph (a)(3) is removed and paragraph (b) is revised to read as follows:

§ 388.112 Requests for special treatment of documents submitted to the Commission.

* * * * *

(b) *Procedures.* A person claiming that information warrants special treatment as CEII or privileged must file:

(1) A written statement requesting CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information; and

(2) The following, as applicable:

(i) An original plus the requisite number of copies of the public volume filed and marked in accordance with instructions issued by the Secretary;

(ii) An original plus two copies of the CEII volume, if any, filed and marked in accordance with instructions issued by the Secretary; and

(iii) An original only of the privileged volume, if any, filed and marked in accordance with instructions issued by the Secretary.

* * * * *

4. Amend § 388.113 by redesignating paragraph (d)(3) as paragraph (d)(4), by adding new paragraph (d)(3), revising redesignated paragraphs (d)(4)(i) and (d)(4)(ii), redesignating paragraph (d)(4)(iii) as paragraph (d)(4)(iv), and adding new paragraphs (d)(4)(iii) and (e) to read as follows:

§ 388.113 Accessing critical energy infrastructure information.

* * * * *

(d) * * *

(3) A landowner whose property is crossed by or in the vicinity of a project may receive detailed alignment sheets containing CEII directly from the CEII Coordinator without submitting a non-disclosure agreement as outlined in paragraph (d)(4) of this section. A landowner must provide the CEII Coordinator with proof of his or her property interest in the vicinity of a project.

(4) * * *

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following:

Requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Unless otherwise provided in paragraph (d)(3) of this section, a requester must also file an executed non-disclosure agreement. A requester is also requested to include his or her social security number for identification purposes. A requester who seeks the information on behalf of all employees of an organization should clearly state that the information is sought for the organization, that the requester is authorized to seek the information on behalf of the organization, and that the requester agrees to be bound by a non-disclosure agreement which will be applied to all individuals who access to the CEII.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information.

(iii) Once a CEII requester has been verified by Commission staff as a legitimate requester who does not pose a security risk, his or her verification will be valid for the remainder of that calendar year. Such a requester is not required to provide detailed information about himself with subsequent requests during the calendar year. The requester also is not required to file an NDA with subsequent requests during the calendar year.

* * * * *

(e) Fees for processing CEII requests will be determined in accordance with § 388.109.

[FR Doc. E6-15822 Filed 10-2-06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD08-06-026]

RIN 1625-AA01

Anchorage Regulations; Sabine Pass Channel, Sabine Pass, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations for the Sabine Pass Channel, Sabine Pass, TX anchorage in order to improve navigation safety for vessels entering and exiting Cheniere Energy's Liquefied Natural Gas terminal. This proposed rule would reduce the overall size of the existing anchorage.

DATES: Comments and related material must reach the Coast Guard on or before December 4, 2006.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (dpw), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130-3396, *Attn:* Doug Blakemore. The Eighth Coast Guard District Commander 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 Eighth Coast Guard District (dpw), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Blakemore, Waterways Management Branch for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 671-2109.

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 [CGD08-06-026], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches,

suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (dpw), 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

Cheniere Energy is constructing a liquefied natural gas (LNG) terminal on the eastern waterfront of the Sabine Pass Channel. This facility is located immediately north and adjacent to the Sabine Pass Channel anchorage. Due to the angle that the terminal berth lays relative to the channel, vessels intending to berth at or depart the LNG terminal would have to follow a path that passes through the existing anchorage. Vessels anchored in the existing anchorage would be at an increased risk for being struck by an arriving or departing vessel.

In order to reduce this risk, the Coast Guard proposes to make the overall size of the anchorage area smaller. This action would reduce the possible conflict associated with vessels that may anchor too close to the entrance of the LNG terminal. It would also provide a larger maneuvering area for vessels arriving to or departing from the LNG terminal, which consequently will reduce the possibility of a grounding or collision with another vessel in the area.

Discussion of Proposed Rule

The Coast Guard proposes to amend the anchorage regulations for the Sabine Pass Channel, Sabine Pass, TX anchorage in order to improve navigation safety for vessels entering and exiting Cheniere Energy's Liquefied Natural Gas terminal. This proposed rule would reduce the overall size of the existing anchorage.

The current description of the anchorage is found in 33 CFR 110.196 and is listed as follows: "The navigable waters of Sabine Pass within a trapezoidal area 1,500 feet wide and varying uniformly in length from 5,800 feet to 3,000 feet with the long side adjacent to the northeasterly edge of Sabine Pass Channel at a location opposite the town of Sabine Pass."

This proposed rule would shorten the "long side", also referred to as the channel side, from 5,800 feet to approximately 5,000 feet. This would be accomplished by shortening the northern portion of this side by 800 feet. No other changes to the anchorage would be made.

In order to eliminate confusion regarding the geographic boundary of the proposed anchorage, the current description would be replaced with geographic coordinates that would define the boundary of the anchorage. The proposed coordinates of the anchorage would be:

<i>Latitude</i>	<i>Longitude</i>
29°44'14" N	93°52'24" W
29°44'18" N	93°52'06" W
29°43'53" N	93°51'47" W
29°43'32" N	93°51'52" W

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. Current information indicates that this anchorage area is rarely used, and the overall reduction in anchorage area would not significantly impact those vessels desiring to use the anchorage.

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 anchor in the Sabine Pass Channel, Sabine Pass,

TX anchorage. This proposed rule would not have a significant economic impact on a substantial number of small entities because this anchorage area is believed to be rarely used.

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 Doug Blakemore at (504) 671–2109.

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 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 would 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.ID, 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)(f), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

Under figure 2–1, paragraph (34)(f), of the Instruction, an Environmental Analysis Check List and a Categorical Exclusion Determination are not required because this proposed rule would reduce the size of the existing anchorage. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage regulations.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. In § 110.196, revise paragraph (a) to read as follows:

§ 110.196 Sabine Pass Channel, Sabine Pass, Tex.

(a) *The anchorage area.* The waters bounded by a line connecting the following coordinates:

Latitude	Longitude
29°44'14" N	93°52'24" W
29°44'18" N	93°52'06" W
29°43'53" N	93°51'47" W
29°43'32" N	93°51'52" W

* * * * *

Dated: August 28, 2006.

Joel R. Whitehead,

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

[FR Doc. E6–16315 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–050]

RIN 1625-AA09

Drawbridge Operation Regulations; Venetian Causeway (West) Drawbridge, Atlantic Intracoastal Waterway, Mile 1088.6, and Venetian Causeway (East) Drawbridge, Biscayne Bay, Miami, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the Venetian Causeway (West) drawbridge, Atlantic Intracoastal Waterway, mile 1088.6, and Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida. This proposed rule will require these drawbridges to open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays the drawbridges will open on the hour and half-hour. This proposed rule will change the individual Federal holiday dates and align it with all Federal holidays.

DATES: Comments and related material must reach the Coast Guard on or before December 4, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050. Commander (dpb) 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 Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6744.

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 [CGD07-06-050], 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 Bridge Branch, Seventh Coast Guard District 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 existing regulation of the Venetian Causeway (West) Drawbridge, Atlantic Intracoastal Waterway mile 1088.6, Miami, Miami-Dade County, Florida, requires the draw to open promptly and fully for the passage of vessels when a request to open is given. The existing regulation of the Venetian Causeway (East) Drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida, requires the draw to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draws shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day and Washington's Birthday. The draw shall open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

The residents of Venetian Causeway requested the regulations of both drawbridges (East and West) be changed to allow for a 30-minute opening schedule from 7 a.m. to 7 p.m. Monday through Friday, except Federal holidays in order to relieve vehicular traffic delays.

On April 3, 2006, we published a test deviation entitled Drawbridge Operation Regulations; Venetian Causeway (West) drawbridge, Atlantic Intracoastal Waterway, mile 1088.6, and Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida in the **Federal Register** (71 FR 16492). We received eight comments all in favor of the temporary deviation.

There has been confusion on which Federal holiday schedule the Venetian Causeway (East) Bridge should follow as the individual holidays listed do not follow the Federal Holiday Schedule. This proposed rule will align the Venetian Causeway (East) Bridge to the Federal Holiday Schedule and eliminate the confusion.

Discussion of Proposed Rule

The Venetian Causeway (West) drawbridge, Atlantic Intracoastal Waterway, mile 1088.6, and Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida. This proposed rule will require these drawbridges to open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays the drawbridges will open on the hour and half-hour. This proposed rule will remove the individual Federal holiday list and align it with the current Federal holiday schedule.

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 is unnecessary.

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 needing to transit the Intracoastal Waterway in the vicinity of the Venetian Causeway (West) Bridge and vessels needing to transit Biscayne Bay in the vicinity of the Venetian Causeway (East) Bridge, persons intending to drive over the bridges, and nearby business owners. The revision to the opening schedule will not have a significant impact on a substantial number of small entities. Vehicle traffic and small business owners in the area might benefit from the improved traffic flow that regularly scheduled openings will offer this area. Although bridge openings will be less frequent, vessel traffic will still be able to transit the Intracoastal Waterway and Biscayne Bay in the vicinity of the Venetian Causeway (East and West) Bridges pursuant to the revised opening schedule.

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 Seventh Coast Guard District Bridge Branch at the address 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that 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.ID, 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 section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. However, comments on this section will be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.261 revise paragraphs (nn)–(pp) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(nn) The Venetian Causeway Bridge (West), mile 1088.6, shall open on signal, except that from 7 am to 7 pm, Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour.

(oo)–(pp) [Reserved.]

* * * * *

3. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The Venetian Causeway Bridge (East) shall open on signal, except that from 7 am to 7 pm, Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour.

Dated: September 21, 2006.

J.A. Watson,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. E6–16274 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–158]

RIN 1625–AA09

Drawbridge Operation Regulations; Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, Mile 68.6, Sarasota, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a supplemental change to its notice of proposed rulemaking for modifying the Stickney Point (SR 72) drawbridge operating regulation. This proposal addresses changes based on comments received from a Notice of Proposed Rulemaking published on December 21, 2005, and a test deviation that was held from April 24, 2006 until July 21, 2006.

DATES: Comments and related material must reach the Coast Guard on or before November 2, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131-3050. Commander (dpb) 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 Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131-3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305-415-6743.

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 [CGD07-05-158], 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 another public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District 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 existing regulation of the Stickney Point (SR 72) bridge, mile 68.6 at Sarasota, published in 33 CFR 117.5 requires the draw to open on signal.

On December 21, 2005 a Notice of Proposed Rulemaking was published in the **Federal Register** (70 FR 75767). This proposal was for an on the hour and

half-hour opening schedule. We received 48 comments from the public. All of the comments were against changing the regulation to twice an hour openings.

From April 24, 2006, until July 21, 2006, a test of a twenty minute opening schedule (as published in the **Federal Register** at 71 FR 16491) was conducted per the request of City officials of Sarasota. The test was conducted because city officials did not believe the current drawbridge regulation was meeting the needs of vehicular traffic.

During the test, we received five public comments. Four of the comments were from motorists who were in favor of the twenty minute schedule and one comment was against changing the current regulation.

Discussion of Proposed Rule

This proposed rule would require the Stickney Point (SR 72) bridge, mile 68.6, at Sarasota to open on the hour, twenty minutes past the hour and forty minutes past the hour. The objective of this revision is to allow local vehicular traffic to plan their bridge crossings, especially during peak periods of increased road congestion.

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 is unnecessary.

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 needing to transit the Intracoastal Waterway in the vicinity of the Stickney Point bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the opening schedule would not have a significant impact on a substantial number of small entities. Vehicle traffic and small business owners in the area might benefit from the improved traffic planning that regularly scheduled openings will offer this area. Although bridge openings will be less frequent, vessel traffic will still be able to transit the Intracoastal Waterway in the vicinity of the Stickney Point Bridge pursuant to the revised openings schedule.

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 to the Seventh Coast Guard District Bridge Branch at the address under **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 Seventh Coast Guard District Bridge Branch at the address 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that 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.ID, 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 section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. However, comments on this section will be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.287(b–1) and add (c) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) Stickney Point (SR 72) Bridge, mile 68.6. The draw need only open on the hour, 20-minutes after the hour, and 40-minutes after the hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays.

(c) The draw of the Siesta Drive Bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: September 21, 2006.

J. A. Watson,

*Captain, U.S. Coast Guard, Commander,
Seventh Coast Guard District Acting.*

[FR Doc. E6–16285 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

[FAR Case 2005–027; Docket 2006–0020; Sequence 9]

RIN 9000–AK60

Federal Acquisition Regulation; FAR Case 2005–027, FAR Part 30—CAS Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement recommendations to change the regulations related to the

administration of the Cost Accounting Standards (CAS).

DATES: Interested parties should submit written comments to the FAR Secretariat on or before December 4, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005-027 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005-027 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Mr. Jeremy Olson, at (202) 501-3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-027.

SUPPLEMENTARY INFORMATION:

A. Background

On March 9, 2005, the Councils issued a final rule (FAR case 1999-025) revising FAR Part 30, "CAS Administration" which significantly streamlined the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices. Subsequent to this, a number of recommended changes to FAR Part 30 have been submitted by both government and industry representatives. These recommendations have been evaluated and, where warranted, changes are being proposed herein.

B. Discussion

The Councils are proposing to revise the following FAR provisions:

1. FAR 30.001 includes minor changes to the definitions of a number of terms. Related changes are made to the FAR clause at 52.230-6(a). These changes are made to ensure that each term is consistently defined in both locations.

2. FAR 30.601(c) is added to require that the cognizant Federal agency official (CFAO) request and consider the advice of the auditor, as appropriate, when administering the Cost Accounting Standards. As a result, the phrase "with the assistance of the auditor" is deleted from several other sections of FAR Part 30.

3. FAR 30.602(d) is revised to include references to FAR 30.603, 30.604, and 30.605.

4. FAR 30.604(g) and 30.605(f) are revised to specify that the CFAO must evaluate the Detailed Cost Impact (DCI) proposal for cost accounting practice changes or noncompliances when a contractor is required to submit a DCI.

5. FAR 30.604(h)(4) is revised to indicate that the Changes clause is to be used to negotiate equitable adjustments related to required or desirable changes.

6. 30.605(h)(6) is added (and the current (h)(6) is redesignated as (h)(7)) to specify that the cost impact of a noncompliance that affects both cost estimating and cost accumulation shall be determined by combining the separate cost impacts of both the cost estimating and cost accumulation noncompliances.

Two other related issues were considered by the Councils no changes will be made in response to those recommendations. These include the following:

Issue: The Councils were informed of a concern about precluding contract awards when a contractor has submitted a revised Disclosure Statement, but that Disclosure Statement has not yet been determined adequate by the contracting officer.

Councils' Position: The Councils believe that the regulations currently provide adequate flexibility to address any such circumstances that may arise, including the waiver authority contained in the CAS/FAR. Furthermore, to date the Councils are unaware of any instances in which awards have been delayed pending determinations about the adequacy and/or compliance of revised Disclosure Statements.

Issue: Currently, FAR 30.606(a) prohibits combining the cost impacts of two unilateral accounting changes

unless they both result in increased costs. The Councils were informed that such a rule may reduce contracting officer flexibility and may be contrary to established practices.

Councils' Position: FAR 30.606(a) is consistent with current statutory requirements which do not permit the combining of cost impacts for two or more unilateral changes. The Councils note that the contracting officer in such cases should separately determine whether each change is desirable, based on the criteria in FAR Part 30. Should the contracting officer determine that certain of the changes are desirable, the contracting officer would then have the authority to combine the cost impacts of those changes in determining the amount of the equitable adjustment resulting from the desirable changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts awarded to small businesses are exempt from the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 30 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2005-027), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 30

Government procurement.

Dated: September 22, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 30 as set forth below:

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

1. The authority citation for 48 CFR part 30 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 30.001 by—

a. Adding to the definition “Cognizant Federal agency official (CFAO)” “the ” following “administer”;

b. Removing from the definition “Desirable change” “unilateral” and adding “compliant” in its place; and

c. Revising paragraph (1) of the definition “Required change” to read as follows:

30.001 Definitions.

* * * * *

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently becomes applicable to an existing CAS-covered contract or subcontract due to the receipt of another CAS-covered contract or subcontract; or

3. Amend section 30.601 by removing from paragraph (b) “52.230–6(b)” and adding “52.230–6(l)” in its place; and by adding paragraph (c) to read as follows:

30.601 Responsibility.

* * * * *

(c) In performing CAS administration, the CFAO shall request and consider the advice of the auditor as appropriate (see also 1.602–2).

4. Amend section 30.602 by revising paragraph (d) to read as follows:

30.602 Materiality.

* * * * *

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall follow the applicable provisions in 30.603, 30.604, 30.605, and 30.606.

5. Amend section 30.604 by—

a. Removing from the introductory text of paragraphs (b) and (f) “, with the assistance of the auditor,”;

b. Revising the introductory text of paragraph (g);

c. Revising the introductory text of paragraph (h)(4) and removing paragraphs (h)(4)(i) and (h)(4)(ii); and

d. Removing from paragraph (i)(1) “With the assistance of the auditor, estimate” and adding “Estimate” in its place.

The revised text reads as follows:

30.604 Processing changes to disclosed or established cost accounting practices.

* * * * *

(g) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(4) For required or desirable changes, negotiate an equitable adjustment as provided in the Changes clause of the contract.

* * * * *

6. Amend section 30.605 by—

a. Removing from the introductory text of paragraph (c)(2) “, with the assistance of the auditor,”;

b. Revising the introductory text of paragraph (f); and

c. Redesignating paragraph (h)(6) as (h)(7) and adding a newly designated paragraph (h)(6).

The revised text reads as follows:

30.605 Processing noncompliances.

* * * * *

(f) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(6) The cost impact of each noncompliance that affects both cost estimating and cost accumulation shall be determined by combining the cost impacts in paragraphs (h)(3), (h)(4), and (h)(5) of this section; and

* * * * *

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.230–6 by—

a. Revising the date of the clause;

b. Removing from the definition “Fixed-price contracts and subcontracts” the word “FAR” each time it appears (4 times);

c. Amending the definition “Flexibly-priced contracts and subcontracts” by revising paragraph (1); and by removing from paragraphs (2) through (5) the word “FAR”; and

d. Revising paragraph (1) of the definition “required change”.

The revised text reads as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (DATE)

* * * * *

(a) * * *

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.203–1(a)(2), 16.204, 16.205, and 16.206;

* * * * *

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

* * * * *

(End of clause)

[FR Doc. 06–8425 Filed 10–2–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAR Case 2006–004; Docket 2006–0020; Sequence 10]

RIN 9000–AK58

Federal Acquisition Regulation; FAR Case 2006–004, FAR Part 30 - CAS Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement recommendations to revise the regulations related to the administration of the Cost Accounting Standards (CAS).

DATES: Interested parties should submit written comments to the FAR Secretariat on or before December 4, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–004 by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006-004 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jeremy Olson, at (202) 501-3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2006-004.

SUPPLEMENTARY INFORMATION:

A. Background

On May 23, 2005, the Cost Accounting Standards Board published an interim rule in the **Federal Register** at 70 FR 29457 revising the applicability of CAS to U.K. contracts and subcontracts. The interim rule effected three changes in this regard:

• Amendment of 48 CFR 9903.202-1(e) to add the U.K. to the list of countries whose contractors may file a disclosure form adopted by an agency of their own government in lieu of the CASB-DS-1. As a result, U.K. contractors are permitted to file the U.K. "Questionnaire on Method of Allocation of Costs" and "Supplemental QMAC."

• Deletion of the CAS exemption at 48 CFR 9902.201-1(b)(12). Henceforth, all foreign contracts and subcontracts, including U.K. contracts and subcontracts, are subject to the requirements at 48 CFR 9903.201-1(b)(4) and must comply with CAS 401 and 402.

• Deletion of 48 CFR 9903.201-4(d), Consistency in Cost Accounting Practices. This contract clause is no longer appropriate for inclusion in contracts with U.K. concerns.

In order to retain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are proposing FAR revisions as outlined below:

1. *FAR 30.201-4(c), Consistency in Cost Accounting Practices.* This part is renamed as Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns. It is also being revised to delete the language related to contracts awarded to United Kingdom contracts and to add language that addresses contracts subject to CAS 401 and 402 under 48 CFR 9903.201-1(b)(4).

2. *FAR 52.230-4, Consistency in Cost Accounting Practices.* The clause is renamed as Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns. The clause is also revised to specify that it applies to contracts awarded to foreign concerns who are subject to CAS 401 and 402.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts awarded to small businesses are exempt from the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 30 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006-004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: September 26, 2006.

Ralph De Stefano

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 30 and 52 as set forth below:

1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Amend section 30.201-4 by revising paragraph (c) to read as follows:

30.201-4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.* The contracting officer shall insert the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns, in negotiated contracts that are subject to CAS 401 and 402 under 48 CFR 9903.201-1(b)(4).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.230-4 by revising the section and clause headings and the clause to read as follows:

52.230-4 Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES FOR CONTRACTS AWARDED TO FOREIGN CONCERNS (DATE)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on FORM CASB DS-1 or other disclosure form as permitted by 48 CFR 9903.202-1(e) in estimating, accumulating, and reporting costs under this contract, and comply with the requirements of CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs, and CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose. In the event the Contractor fails to follow such practices, or comply consistently with CAS 401 and 402, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement or other form permitted, pursuant to 48 CFR 9903.202-1(e) shall be available for inspection and use by authorized

representatives of the United States Government.

(End of clause)

[FR Doc. 06-8413 Filed 10-2-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU77

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 644 acres (ac) (262 hectares (ha)) are proposed for the designation of critical habitat for these two species. Approximately 283 ac (115 ha) of land in Riverside County, California, are being proposed as critical habitat for *C. ophiochilus*, and approximately 361 ac (147 ha) of land in San Diego County, California, are being proposed as critical habitat for *F. mexicanum*.

DATES: We will accept comments from all interested parties until December 4, 2006. We must receive requests for public hearings, in writing, at one of the addresses shown in the **ADDRESSES** section by November 17, 2006.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your written comments and information by any of the following methods:

(1) *E-mail:*

fw8cfwocomments@fws.gov. Include "RIN 1018-AU77" in the subject line. Please see the Public Comments Solicited section under **SUPPLEMENTARY INFORMATION**.

(2) *Fax:* 760/431-9624.

(3) *U.S. mail or hand-delivery:* Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431-9440.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of *Ceanothus ophiochilus* or *Fremontodendron mexicanum* habitat, what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species, and what areas that were not occupied at the listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the mapped critical habitat subunits and their possible effects on proposed critical habitat;

(4) We are proposing to exclude non-Federal lands targeted for conservation within the Western Riverside County MSHCP from the final designation of critical habitat for *Ceanothus ophiochilus* under section 4(b)(2) of the Act (see *Exclusions Under Section 4(b)(2) of the Act* for details on the Western Riverside MSHCP). Please provide information concerning whether the benefits of exclusion of any of these specific areas outweigh the benefits of their inclusion under section 4(b)(2) of the Act. If the Secretary determines the benefits of including these lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

(5) The appropriateness of excluding lands that contain *Fremontodendron mexicanum* occurrences within areas of

the San Diego MSCP and areas of the BLM Otay Mountain Wilderness covered by the 1994 multiple agency MOU (MOU 1994) from the final designation of critical habitat. *Fremontodendron mexicanum* is not covered by the MSCP; however, other species that co-occur with *F. mexicanum* are covered by the MSCP. Please provide comments whether the protection and management of the habitat for these co-occurring species is adequate to justify the exclusion of these lands under section 4(b)(2) of the Act. Also, we are seeking any information on the benefits of including or excluding these lands from the critical habitat designation;

(6) The appropriateness of including lands in the Agua Tibia Mountains owned by the U.S. Forest Service and managed under its Land Management Plans for the Four Southern California National Forests from the final designation of critical habitat for *Ceanothus ophiochilus*. Please provide comments on how implementation of the management plan(s) in the Agua Tibia Mountains will or will not provide for conservation for *C. ophiochilus*. Also provide information on any minimization measures or monitoring plans for *C. ophiochilus* that will help insure that the occurrences of *C. ophiochilus* remain healthy and viable in the Cleveland National Forest. Finally, provide comments on the benefits of including or excluding these lands from the critical habitat designation;

(7) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(8) 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;

(9) Information concerning pollinator species for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* and whether sufficient information exists to determine if such a biological feature should be considered a primary constituent element for either of these species (please see "Primary Constituent Elements" section of this proposed rule for a detailed discussion);

(10) Whether any areas not currently known to be occupied by either species, but essential to the conservation of either species, should be included in the proposed designation; and

(11) Whether the benefit of exclusion of any particular area outweighs the

benefits of inclusion under section 4(b)(2) of the Act.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to fw8cfwocomments@fws.gov. Please also include "Attn: RIN 1918-AU77" in your e-mail subject line 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 Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number (760) 431-9440. Please note that the e-mail address fw8cfwocomments@fws.gov will be closed at the termination of the public comment period.

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

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) Designation provides additional

protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, 475 species, or 36 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*). In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and

controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54956).

Species Descriptions and Life History

As discussed in the listing rule, *Ceanothus ophiochilus* is a 4–5 feet (ft) (1.2–1.5 meters (m)) tall shrub in the buckthorn family (Rhamnaceae) described by Steve Boyd, Timothy Ross, and Laurel Arnseth based on a collection made by the authors in March 1989 west of Vail Lake in Riverside County, California (Boyd *et al.* 1991). *Fremontodendron mexicanum* is a small tree or shrub 5–19 ft (1.5–6 m) tall in the cacao family (Sterculiaceae) first described by Anstruther Davidson (1917) based on a collection sent to him by Kate Sessions.

Ecology and Habitat

Ceanothus ophiochilus occurs in restricted, localized occurrences in the interior foothills of Riverside County, California, and *Fremontodendron mexicanum* occurs in restricted and localized occurrences from the foothills of San Diego County and northwestern Baja California, Mexico. *Ceanothus ophiochilus* is found in chamise-chaparral, often in association with specific soil types (Fross and Wilken 2006, p. 216). *Fremontodendron mexicanum* is known from ephemeral drainages and associated slopes with closed-cone coniferous forest dominated by Tecate cypress and chaparral. *Fremontodendron mexicanum* is found on the San Miguel Exchequer soil series; however, the distribution of this soil series covers a much larger geographic area than the known distribution of this species in the United States.

Chaparral, like other Mediterranean shrubland communities, is adapted to intervals between wildfires of approximately 20 to 50 years (Keeley

1986). However, chaparral species have differing life history modes and characteristics (Keeley 1986, p. 95). *Ceanothus ophiochilus* does not resprout after fire but instead recovers by post-fire seed germination from seeds stored in the soil. This “obligate seeder,” like other species of *Arctostaphylos* (manzanita) and *Ceanothus*, require[s] 5–25 years for seed crops sufficient to replenish the seed pool in the soil (Keeley 1986, p. 99). Citing Arnold *et al.* 1951 and Zedler *et al.* 1983, Keeley (1986, p. 99) stated that if frequent fires occur, obligate seeders may not produce enough seed, then these obligate seeders may be eliminated from chaparral. Moreover, sustained fire prevention can result in senescent stands of *C. ophiochilus* that may not survive the eventual and unpredictable fires to reproduce vegetatively (Boyd *et al.* 1991, pp. 30–39).

On the other hand, *Fremontodendron mexicanum* is a “facultative resprouter” because it recovers after fire by seed germination and by resprouting from its roots. According to Keeley (1986, pp. 104–105), facultative resprouters are “clearly more resilient to frequent fire [than obligate seeders] and they are potentially more resilient to long fire-free periods [like “obligate resprouters”] because of their ability to replace their canopy with new basal sprouts in the absence of fire.”

Distribution

Both *Ceanothus ophiochilus* and *Fremontodendron mexicanum* have extremely limited distributions. The listing rule (63 FR 54956) describes only three known occurrences of *C. ophiochilus*. These occurrences are known from two distinct places; one is west of Vail Lake and the other two are south of Vail Lake in the Agua Tibia Wilderness of the Cleveland National Forest in southwestern Riverside County. No new occurrences of this species have been found since the time it was listed. *Fremontodendron mexicanum* is only found growing naturally in southern San Diego County on Otay Mountain and in northwestern Baja California, Mexico. As stated in the listing rule, *F. mexicanum* is used in landscaping as a drought-tolerant plant, and this has led to a number of collection records that are far outside this species’ natural range. At the time of listing, fewer than 10 historical locations had been reported for *F. mexicanum* in the United States. After researching the historical locations for the publication of the listing rule, it was determined that only one population of

F. mexicanum was both extant and of native origin.

In early 2006, a previously undiscovered occurrence of *Fremontodendron mexicanum* was found in Little Cedar Canyon on Otay Mountain by Service biologists on land managed by the Bureau of Land Management. Little Cedar Canyon is located just to the west of Cedar Canyon, where the only other natural U.S. occurrence of *F. mexicanum* is found. This new occurrence in Little Cedar Canyon is spread out over a 1-mile (1.6 kilometers) stretch of the canyon bottom. Twenty-six plants were documented in this canyon; however, the entire canyon was not surveyed and additional plants may occur further up the canyon or up one of the side canyons. With regards to occurrences in Baja California, Mexico, we have no current information on the population in Arroyo Seco; however, the occurrence in Arroyo Hediondo was visited in early 2006 (Snapp-Cook 2006). During that survey effort, four plants were found and a dam had been built upstream about 1 mile (1.6 kilometers) from the location where the plants were found that may affect the hydrology of the stream (Snapp-Cook 2006).

Previous Federal Actions

Ceanothus ophiochilus and *Fremontodendron mexicanum* were federally listed as endangered and threatened, respectively, on October 13, 1998 (63 FR 54956). *Ceanothus ophiochilus* and *F. mexicanum* are listed as endangered and rare, respectively, by the State of California (Fross and Wilken 2006, p. 85). At the time these plants were federally listed, the Service evaluated the benefits of designating critical habitat to the detrimental effects (threats) of increased collection and vandalism and the potential for private landowner misunderstandings about the effects of critical habitat designation on private lands. The Service found, based on these factors, that designation of critical habitat for each species, *C. ophiochilus* and *F. mexicanum*, was not prudent. On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for these two species as well as three other plant species (*Center for Biological Diversity, et al. v. Gale Norton, Secretary of the Department of the Interior, et al.*, C–04–3240 JL, N. D. Cal.). The Service agreed to withdraw our previous not prudent finding and publish a proposed determination of critical habitat on or before September

20, 2006. If prudent and a proposed designation is promulgated, then a final designation is due by September 20, 2007. Neither of these species currently has a completed recovery plan. We are hereby withdrawing our previous not prudent determination of critical habitat for *C. ophiochilus* and *F. mexicanum*. We have further re-evaluated prudence of designating critical habitat for these two species and reconsidered our evaluation of the threats posed by vandalism and overcollection in our previous prudence determination. We currently have no credible information indicating that the designation of critical habitat would be expected to increase the human threat from vandalism or overcollection. Therefore, we have now determined critical habitat to be prudent. As a result, we are now proposing to designate critical habitat for *C. ophiochilus* and *F. mexicanum*.

Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not

affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) In addition, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), along with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional

information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support occurrences, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. This includes information from the proposed listing rule (October 2, 1995, 60 FR 51433) and final listing rule (63 FR 54956), data from research and survey observations published in peer-reviewed articles, site visits and unpublished survey data, regional Geographic Information System (GIS)

layers including soil, vegetation and species coverages from both San Diego and Riverside Counties, and data compiled in the California Natural Diversity Database (CNDDDB). We have also reviewed available information that pertains to the habitat requirements of these species. We are not proposing any areas outside the geographical area occupied by the species at the time of listing except for Little Cedar Canyon, which contains *F. mexicanum*.

For *Ceanothus ophiochilus*, the primary informational sources used for this proposal are (1) CNDDDB (2005 and 2006); (2) Boyd *et al.* (1991); (3) Boyd and Banks (1995); (4) herbarium records from San Diego Natural History Museum, University of California at Berkeley, University of California at Riverside, and Rancho Santa Ana Botanical Garden; and (5) site visits by Service biologists to the known occurrences of *Ceanothus ophiochilus* in the Agua Tibia Wilderness of the Cleveland National Forest in early 2006. Additional information was provided by the Cleveland National Forest of the U.S. Forest Service (USFS), which was reviewed for development of this proposed rule.

For *Fremontodendron mexicanum*, the primary informational sources used for mapping the *Fremontodendron mexicanum* proposed critical habitat are the following: (1) CNDDDB (2005 and 2006); (2) Kelman (1983, 1991); (3) herbarium records from San Diego Natural History Museum, University of California at Berkeley, University of California at Riverside, and Rancho Santa Ana Botanical Garden; and (4) site visits conducted by Service biologists in late 2005 and early 2006. The following informational sources were also used in the preparation of this rule: (1) The San Diego Project Office/Palm Springs—South Coast Field Office of the U.S. Bureau of Land Management (BLM); (2) the County of San Diego, MSCP Division; (3) the Botany Department of San Diego Natural History Museum; and (4) site visits by Service biologists. Service biologists conducted site visits to Cedar Canyon (CNDDDB element occurrence #1, #13, #16), Little Cedar Canyon, and one unnamed canyon on the west side of Otay Mountain (CNDDDB element occurrence #7) in late 2005 and early 2006 with the goal of relocating presumed extirpated historical occurrences of *F. mexicanum*. Service biologists also surveyed Horsethief Canyon north of Barret Lake in early 2006 to investigate a collection of *F. mexicanum* made in 1999 (CNDDDB element occurrence #17). Service biologists were unable to relocate any of the historical sites outside of the known

occurrence in Cedar Canyon; however, Service biologists did locate a previously undiscovered occurrence of *F. mexicanum* in Little Cedar Canyon during these site visits. In the site visit to the occurrences in Cedar Canyon and Little Cedar Canyon, the species was found growing on the terraces adjacent to Cedar Creek and on the slopes associated with the stream and terraces.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features, or primary constituent elements (PCEs), that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations or protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Ceanothus ophiochilus

The specific primary constituent elements required for *Ceanothus ophiochilus* are derived from the biological and physical needs of the species as described in the final listing rule (63 FR 54956), as well as information contained in this proposed rule.

Space for Growth and Reproduction

Ceanothus ophiochilus is restricted to ridgetops and north- to northeast-facing slopes in chamise chaparral (PCE #1). It occurs on soils formed from metavolcanic and ultra-basic parent materials or deeply weathered gabbro, all of which are phosphorus deficient and thus considered to be nutrient-poor (PCE #2) (Boyd *et al.* 1991). These soils are similar to serpentine soils, which are well known for the high number of associated rare and endemic plants (Kruckeberg 1984). The high number of rare and endemic plants that grow on nutrient-poor soils, sometimes termed as harsh soils, is due to the difficulty that common plants have with growing in these conditions. In turn, when plants become established on such soils, they remain genetically isolated from close relatives that are not able to thrive on the specialized soils. In this way, these nutrient-poor soils may help the

species maintain reproductive isolation (Boyd *et al.* 1991). This is important because *C. ophiochilus* appears to hybridize with the locally common *C. crassifolius* in places where the two species come in close proximity (Boyd *et al.* 1991). Hybrids are generally found on the margins of *C. ophiochilus* occurrences, where the soil changes from the harsh metavolcanic soil that *C. ophiochilus* is typically found on to the milder surrounding soil that supports species such as *C. crassifolius* (Boyd *et al.* 1991). Because hybridization is a common natural phenomenon among the species of *Ceanothus* (Schmidt 1993; Fross and Wilken 2006, pp. 131–149), these metavolcanic soils are not only important for growth and reproduction of *C. ophiochilus*, but also for space and separation from other *Ceanothus* species.

Soils where the plant is found in the Agua Tibia Wilderness are mapped as Ramona, Cienaba, and Vista series (USDA 1973, pp 38–40, 70–71, 82–83), but appear to be Las Posas series based on field review and soil samples (USFS 1998a). Soils where the plant is found at Vail Lake are mapped as Cajalco series (USDA 1971, p. 21).

Ceanothus ophiochilus is found in chamise chaparral or mixed chamise-ceanothus-manzanita chaparral at elevations of 2,000–3,000 ft (666 to 1,000 m) (California Department of Fish and Game 2000, CNF occurrence record forms) with the following associated species: *Adenostoma fasciculatum*, *A. sparsifolium*, *Quercus berberidifolia*, *C. crassifolius*, *Arctostaphylos* spp., *Salvia clevelandii*, and *Eriodictyon crassifolium* (PCE #3) (Boyd *et al.* 1991). These species are much more common than *C. ophiochilus* in chaparral ecosystems. Even though they grow in close proximity to *C. ophiochilus*, some of these species are unable to grow on the specific type of soil where *C. ophiochilus* is found, and hybrids were found on the edges of the occurrence in a different type of soil (Boyd *et al.* 1991, p. 38).

We have little information about the pollinators or reproductive biology of this species. This species does not have a burl (an underground mass from which the species can resprout following fire) as some species of *Ceanothus* do; instead, the seeds need fire to germinate and sprout. Little information exists regarding the dispersal of this species.

Primary Constituent Elements for *Ceanothus ophiochilus*

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential

to the conservation of *Ceanothus ophiochilus*. All areas proposed as critical habitat for *C. ophiochilus* are currently occupied, within the species' historical geographic range, identified within the listing rule, and contain sufficient PCEs to support at least one life history function. Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that *C. ophiochilus*' PCEs are:

(1) Flat to gently sloping north to northeast facing ridge tops with slopes in the range of 0 to 40 percent slope that provide the appropriate solar exposure for seedling establishment and growth;

(2) Soils formed from metavolcanic and ultra-basic parent materials and deeply weathered gabbro or pyroxenite-rich outcrops that provide nutrients and space for growth and reproduction. Specifically in the areas that *Ceanothus ophiochilus* is found, the soils are:

(a) Ramona, Cienaba, Las Posas, and Vista series in the Agua Tibia Wilderness; and

(b) Cajalco series in the vicinity of Vail Lake; and

(3) Chamise chaparral or mixed chamise-ceanothus-arctostaphylos chaparral at elevations of 2,000 ft to 3,000 ft (610 m to 914 m) that provide the appropriate canopy cover and elevation requirements for growth and reproduction.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of *Ceanothus ophiochilus*. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Fremontodendron mexicanum

The specific primary constituent elements required for *Fremontodendron mexicanum* are derived from the biological and physical needs of the species as described in the final listing rule (63 FR 54956), as well as the information below.

Space for Growth and Reproduction

For its individual and population growth, *Fremontodendron mexicanum* needs alluvial terraces and benches adjacent to moderately sloped streams, creeks, and ephemeral drainages; stabilized north-to east-facing slopes associated with steep slopes (San Miguel—Exchequer soil complex has slopes in a range of 9 to 70 percent (USDA 1973, p. 76)); and canyons (PCE #1 and #2). *Fremontodendron mexicanum* occurs at elevations of 900 ft (274 m) to 3,000 ft (914 m) in the United States (63 FR 54956); however, in Mexico, *F. mexicanum* occurs at an elevation of approximately 30 ft (9 m). Erosion from the steep slopes on Otay Mountain provides soils that form benches along the streambeds in Cedar Canyon and Little Cedar Canyon where *F. mexicanum* grows. *Fremontodendron mexicanum* also occupies some areas on slopes adjacent to the streambeds (Snapp-Cook 2006). Approximately 1,000 plants were observed on the slopes associated with the alluvial terraces in three specific locations (Snapp-Cook 2006). In each of these locations, plants occurring on the slopes were between 10 and 500 ft (3 and 152 m) from the stream bed. Although the role that the plants on sloped areas play in the dynamics of growth and reproduction of this species is unknown at this time, the high density of these plants suggests that they may play a significant role.

Fremontodendron mexicanum is found growing within open stands of Tecate cypress, which often form a closed-cone coniferous forest, or is interspersed with mixed chaparral and *Platanus racemosa* (sycamore) (PCE #3) (63 FR 54956). In addition to cypress and sycamore, *F. mexicanum* is frequently associated with *Dendromecon rigida* ssp. *rigida* (tree poppy) and *Malosma laurina* (laurel sumac) (Snapp-Cook 2006). The canyon slopes around *F. mexicanum* are generally vegetated with chaparral and coastal sage scrub species (63 FR 54956). This mix of chaparral and riparian species may provide adequate shade and ground cover to exclude nonnative species, preventing such species from competing with *F. mexicanum* (Snapp-Cook 2006). *Fremontodendron mexicanum* is a facultative resprouter, meaning it is able to sprout from underground roots after a fire, flood, or other disturbance destroys the above ground plant (Snapp-Cook 2006). This makes *F. mexicanum* more resilient to frequent fire than obligate seeders (plants that need fire to activate the germination of their seeds)

because obligate seeders like Tecate cypress need 6 to 30 years to produce sufficient numbers of seeds to reproduce following a fire, whereas, *F. mexicanum* has the ability to begin replacing its canopy with new basal sprouts relatively quickly following a fire (Keeley 1986). More research is needed into *F. mexicanum*'s reproduction and the role that pollination and seed production play in its survival.

Hydrology and Soil Moisture Requirements for the Species

Fremontodendron mexicanum has been cultivated since its discovery in the early 1900s, and the data available from the cultivation reports suggest that this species does not need much water and does not do well in soils that do not drain well (Bornstein *et al.* 2005). *Fremontodendron mexicanum* grows on terraces and alluvial benches that are maintained by a natural hydrological cycle, which erodes the surrounding metavolcanic soils on the slopes and deposits those soils in the stream beds (Snapp-Cook 2006). The natural hydrological cycle also maintains open and semi-open spaces where *F. mexicanum* can establish itself. The natural flows may also provide transportation of seeds down stream to establish and augment downstream occurrences.

Primary Constituent Elements for *Fremontodendron mexicanum*

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Fremontodendron mexicanum*. The areas proposed as critical habitat for *F. mexicanum* are currently occupied, within the species' historical geographic range, and contain sufficient PCEs to support the species. Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCEs for *F. mexicanum* are:

(1) Alluvial terraces, benches, and associated slopes within 500 feet (152 meters) of streams, creeks, and ephemeral drainages where water flows primarily after peak seasonal rains with a gradient ranging from 3 to 7 percent; and stabilized north-to east-facing slopes associated with steep (9 to 70 percent) slopes and canyons that provide space for growth and reproduction.

(2) Silty loam soils derived from metavolcanic and metabasic bedrock, mapped as San Miguel-Exchequer Association soil series that provide

nutrients and substrate with adequate drainage to support seedling establishment and growth.

(3) Open *Cupressus forbesii* and *Platanus racemosa* stands at elevations of 900 ft (274 m) to 3,000 ft (914 m) within a matrix of chaparral (such as *Dendromecon rigida ssp. rigida* and *Malosma laurina*) and riparian vegetation that provide adequate space for growth and reproduction.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of *Fremontodendron mexicanum*. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. Both of these species have small ranges and relatively few occurrences; therefore, all known occurrences of each species are essential for their conservation.

To delineate the proposed critical habitat for *Ceanothus ophiochilus*, we used the following criteria: (1) We identified all areas known to be occupied by *C. ophiochilus* at the time of listing and/or currently known to be occupied using the location data from Boyd and Banks (1995); (2) we created GIS polygons, using these areas as guides, that included the occurrences and the ridge tops and north- and northeast-facing slopes immediately adjacent (within 500 ft (152 m)) to the occurrences of *C. ophiochilus*; and (3) we connected the polygons that were closer than 0.6 mi (1 km) to reduce fragmentation and ensure that the subunits captured populations and not individual occurrences.

To delineate the proposed critical habitat for *Fremontodendron mexicanum*, we used the following criteria: (1) We identified all areas known to be occupied by native occurrences (we did not include occurrences known to be of cultivated

origin) of *F. mexicanum* at the time of listing and/or currently known to be occupied using current data in the CNDDDB (2005) and data obtained from field surveys (Snapp-Cook 2006); (2) we created GIS polygons, using these areas as guides, that included the alluvial terraces and benches occupied by *F. mexicanum*, and the associated slopes within 500 ft (152 m) of the areas occupied by *F. mexicanum* to insure that adequate space was delineated to encompass all existing *F. mexicanum* and the area needed to maintain the PCEs; and (3) we connected the polygons that were closer than 0.5 mi (0.8 km) from one another with a 660 ft. (201 m) wide corridor to allow for connectivity between known occurrences for the transfer of pollen and seeds and natural riparian process to occur.

We then analyzed areas meeting these criteria to determine if any existing conservation or management plans exist that benefit the species and their PCEs. *Ceanothus ophiochilus* is included as a covered species in the Western Riverside County MSHCP. As a result, some occupied areas are being proposed for exclusion under section 4(b)(2) of the Act from the final designation of critical habitat for this species (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion). *Fremontodendron mexicanum* was initially considered for coverage under the San Diego MSCP; however, it was not covered because there was not enough information to determine how the MSCP would affect this plant. Other species covered by the San Diego MSCP, such as Tecate cypress and the Thorne's hairstreak butterfly (*Mitoura thornei*) co-occur with *F. mexicanum* in Cedar Canyon and/or Little Cedar Canyon, and the management for these other species may benefit *F. mexicanum*. At this time we are not proposing these areas for exclusion; however, we are soliciting public comment on any benefits to *F. mexicanum* from management of co-occurring species and the appropriateness of exclusion in the final rule (see Public Comments Solicited section).

The MSHCP and MSCP documents were used as aids in determining areas that contain the features that are essential to the conservation of these two species. No areas outside the geographical area occupied at the time of listing by *C. ophiochilus* have been proposed for designation. Areas known to be occupied by *F. mexicanum* at the time of listing plus one newly discovered occupied area are proposed for designation. On the basis of an analysis of the newly discovered

population we have determined that the population is essential for the recovery of the species. As such, the specific area containing this population has been determined to be essential to the conservation of *F. mexicanum*. The importance of the identification of any additional populations was identified in the 1997 biological opinion on the San Diego MSCP, which states, "due to the rarity of the species, any new population found within the planning area will be significant to the survival and recovery of this species" (Service 1997, p. 112).

When determining proposed critical habitat boundaries, we made every effort to avoid including areas such as buildings, paved areas, and other structures that lack PCEs for *Fremontodendron mexicanum* and/or *Ceanothus ophiochilus*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures, and the land under them inadvertently left inside critical habitat boundaries shown on the maps for this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined are occupied and contain sufficient primary constituent elements to support life history functions essential for the conservation of each species.

Units are proposed for designation based on sufficient PCEs being present to support one or more of the species life history functions. Some units contain all PCEs and support multiple life processes. Some segments contain only a portion of the PCEs necessary to support the two species' particular use of that habitat. Where a subset of the PCEs are present (such as water temperature during migration flows) at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the

requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. While take of listed plant species is not authorized under section 10(a)(1)(B) of the Act, HCPs can include conservation measures that benefit listed plant species. We are proposing to exclude the private lands at Vail Lake under the Western Riverside County MSHCP from the final designation of critical habitat for *Ceanothus ophiochilus* because the benefits of exclusion outweigh the benefits of inclusion (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain one or more PCEs that may require special management considerations or protection.

As stated in the final listing rule, threats to *Ceanothus ophiochilus* include habitat destruction, alteration, fragmentation, and degradation from urban development, as well as fire at too frequent intervals to allow for sufficient seed bank replenishment in the soil (63 FR 54956). Threats to *Fremontodendron*

mexicanum as cited in the final listing rule include altered fire regimes, indirect impacts from nearby urbanization, and increased competition from nonnative species (63 FR 54965). These threats could impact the PCEs determined to be essential for conservation of *C. ophiochilus* and *F. mexicanum*.

Urban development near *Ceanothus ophiochilus* proposed units may alter the habitat characteristics required by the species. Land grading in and around occurrences of *C. ophiochilus* may affect the topography of the site and change the soil composition (PCEs #1 and #2) rendering it unsuitable for species growth and reproduction. Urban development in these areas may also encourage invasion by nonnative plant species that would change the vegetation community and/or directly impact the vegetation community (PCE #3). In addition, urban development near this species may increase the frequency of fire. No urban development is expected to impact the occurrences of *C. ophiochilus* on land owned by the U.S. Forest Service, and all of the private land included in this proposed critical habitat designation is covered by the Western Riverside County MSHCP (MSHCP). The single occurrence of *C. ophiochilus* on private land in the MSHCP is targeted for development avoidance, and this occurrence and associated habitat will be managed as part of the MSHCP. We do not believe that special management or protections will be required in addition to what is

provided for by the MSHCP for the occurrence on private land within the MSHCP. Therefore, we are proposing to exclude private lands covered under the MSHCP from the final designation of critical habitat for *C. ophiochilus* (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion).

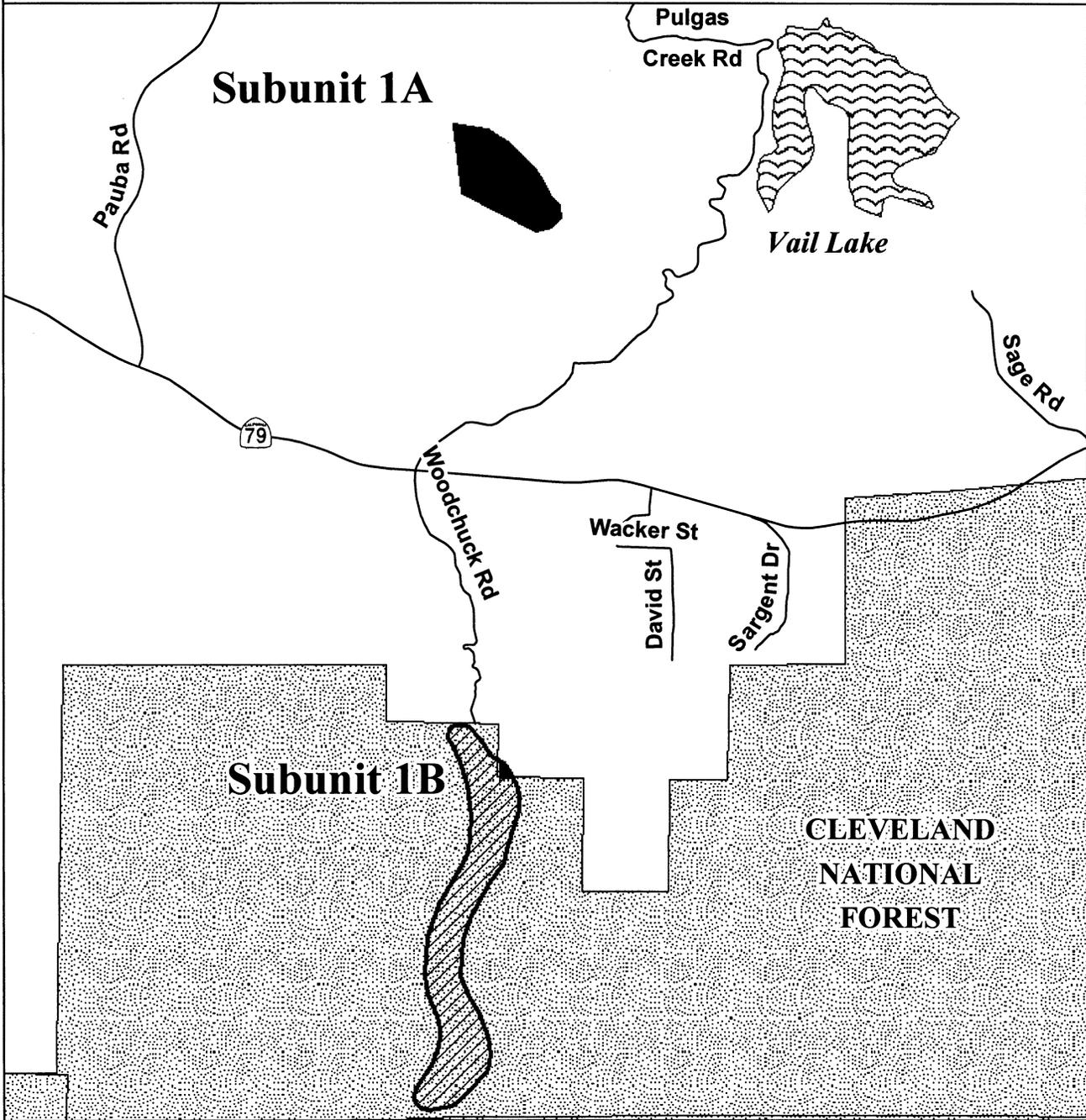
Nonnative plant species such as *Tamarix* spp. (salt cedar) and *Cortaderia selloana* (Pampas grass) could reduce the amount of space available to *F. mexicanum* (PCE #1 and #2) and alter the vegetation community (PCE #3) if they become well established in either Cedar Canyon or Little Cedar Canyon. In our unit descriptions below for this proposed designation, we further describe the threats requiring special management or protections for each proposed unit.

Proposed Critical Habitat Designation for *Ceanothus ophiochilus*

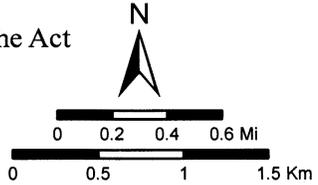
In total, approximately 644 acres (ac) (262 hectares (ha)) are proposed for the designation of critical habitat for these two species. We are proposing as critical habitat 283 ac (115 ha) of land for *Ceanothus ophiochilus* within one unit. This unit is further divided into two subunits: subunits 1A (Vail Lake) and 1B (Agua Tibia Mountains). Of this 283 ac (115 ha) of land, we are proposing to exclude 80 ac (33 ha) under section 4(b)(2) of the Act from the final designation of critical habitat for *C. ophiochilus* (See Figure 1)

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Figure 1
Proposed Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus)
Subunits 1A and 1B, Riverside County, California



-  Proposed Critical Habitat for Final Designation
-  Proposed for exclusion under Section 4(b)(2) of the Act
-  Cleveland National Forest
-  Lakes
-  Roads



Unit 1 is located near Vail Lake in southern Riverside County, California. The areas being proposed as critical habitat constitute our best assessment at this time of areas determined to be occupied at the time of listing, containing the primary constituent elements essential to the conservation of the species that may require special management considerations or protection for *Ceanothus ophiochilus*. Below, we present brief descriptions of the proposed subunits, reasons why they meet the definition of critical habitat for *C. ophiochilus*, and our rationale for their inclusion in this proposal.

Unit 1: Western Riverside County

Subunit 1A, Vail Lake, Riverside County, California

Subunit 1A (Vail Lake) consists of 76 ac (31 ha) of privately-owned land proposed for exclusion from the final critical habitat designation. Subunit 1A contains CNDDDB element occurrence #1, and it is one of only three occurrences of *Ceanothus ophiochilus* known of at the time of listing. Land in this subunit is entirely within an area targeted for conservation under the Western Riverside County MSHCP. Threats to the PCEs that require special management or protections include impacts to ridge tops (PCE #1) from grading activities resulting from urban development impacts to the associated vegetation community (PCE #3), and special planning efforts to maintain a natural fire regime. However, the Western Riverside County MSHCP outlines conservation measures for this species and its habitat, and therefore, the 76 ac (31 ha) of privately owned land is being proposed for exclusion from the final designation (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion).

Subunit 1B, Agua Tibia Mountains, Riverside County, California

Subunit 1B (Agua Tibia Mountains) consists of 207 ac (84 ha) of land, of which 203 ac (82 ha) is federally owned. The remaining 4 ac (2 ha) of privately-owned land are within an area targeted for conservation under the Western Riverside County MSHCP. Therefore, these lands are being proposed for exclusion from the final critical habitat designation (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion). Subunit 1B contains two of the three CNDDDB element occurrences (#2 and #3) of *Ceanothus ophiochilus* known at the time of listing. Threats to features within this subunit that may require

special management include impacts to ridge tops (PCE #1) from grading associated with the creation of fuel breaks and impacts to the associated vegetation community (PCE #3) resulting from unnatural fire regimes. Subunit 1B is mostly within the Agua Tibia Wilderness of the Cleveland National Forest, which is managed by the USFS.

Recently the USFS completed the revised Land Management Plans for the Four Southern California National Forests (Forest Plans). Implementation of these Forest Plans was analyzed by the Service to address potential impacts to *C. ophiochilus*. This analysis found that impacts to *C. ophiochilus* would be minor or negligible upon implementation of appropriate minimization measures due to the low impact nature of activities planned (e.g., dispersed recreation, non-motorized trails) (Service 2005 p. 129–132). However, the plan did not set up specific management and monitoring for *C. ophiochilus*, which may be necessary to insure that the occurrences of *C. ophiochilus* remain healthy and viable. As a result, we believe that the features essential to the conservation of *C. ophiochilus* within this area require special management to address altered fire regime and nonnative species. Therefore, we are proposing to include these lands containing features essential to the conservation of the species in this critical habitat proposal. In this proposed rule, we ask for public comment on the appropriateness of including portions of the Agua Tibia Wilderness in the final designation.

Proposed Critical Habitat Designation for *Fremontodendron mexicanum*

We are proposing as critical habitat 361 ac (147 ha) of land for *Fremontodendron mexicanum* within one unit. This unit is further divided into two subunits: subunits 1A (Cedar Canyon) and 1B (Little Cedar Canyon). The one unit of critical habitat is located on Otay Mountain in southern San Diego County, California. This unit contains privately owned land and federally owned land in the Otay Mountain Wilderness Area managed by the Bureau of Land Management (BLM) (Otay Mountain Wilderness Act of 1999, Pub. L. 106–145, H.R. 15). The critical habitat described below constitutes our best assessment of specific areas determined to be occupied at the time of listing, containing the primary constituent elements essential to the conservation of the species that may require special management considerations or protection for *Fremontodendron mexicanum*. Critical

habitat also includes those additional areas that were not known to be occupied at the time of listing, but are currently occupied and contain the primary constituent elements essential to the conservation of the species. These latter lands (Subunit 1B: Little Cedar Canyon) have been determined to be essential to the conservation of *F. mexicanum*.

Below, we present brief descriptions of the proposed subunits, reasons why they meet the definition of critical habitat for *Fremontodendron mexicanum*, and our rationale for their inclusion in this proposal.

Unit 1: Otay Mountain

Unit 1 consists of 361 ac (147 ha) on Otay Mountain in San Diego County and contains Federal land managed by the BLM and private land. Subunit 1A (Cedar Canyon) and subunit 1B (Little Cedar Canyon) are each separate canyons on the northwest portion of Otay Mountain; subunit 1A encompasses proposed critical habitat within Cedar Canyon and subunit 1B encompasses proposed critical habitat within Little Cedar Canyon. This unit contains all of the PCEs required by *Fremontodendron mexicanum* and is essential to the conservation of the species because it supports the only natural occurrences of this species in the United States.

Otay Mountain is located in southern San Diego County and is part of the San Ysidro Mountains. The Otay Mountain Wilderness Act of 1999 states, "this rugged mountain adjacent to the United States-Mexico border is internationally known for its diversity of unique and sensitive plants." The base of Otay Mountain is at 500 ft (152 m) elevation and the peak is at 3,566 ft (1,087 m) elevation. The distance from the north base of the mountain to the peak is 4 mi (6.4 km) and from the western flank the distance is 4.5 mi (7.2 km).

The majority of lands proposed for designation in this unit are federally owned and under the management of the BLM. This area is also within the Multiple Habitat Preserve Area (MHPA)/ Pre-approved Mitigation Area (PAMA) of the MSCP for the City and County of San Diego (MSCP). At the time the plan was written, *Fremontodendron mexicanum* was not included for coverage under the MSCP because there was not enough information on this species. In our analysis of the MSCP, we concluded that the implementation of the plan would not jeopardize the species (Service 1997, p. 112). Using GIS analysis, we determined that the proposed critical habitat for this species overlaps with the distribution of other

species that are covered species under the MSCP. These species include: Tecate cypress; *Muilla cleavelandii* (San Diego goldenstar); *Tetracoccus dioicus* (Parry's tetracoccus); coastal California gnatcatcher (*Polioptila californica californica*); and the Thorne's hairstreak butterfly (*Mitoura thornei*). The BLM currently has a MOU with several parties stating that the management of the Otay Mountain will follow the MSCP. We are requesting public comment to determine if the protection and management provided for the species covered by the MSCP benefits *F. mexicanum* and its PCEs. However, at this time we are not proposing these areas for exclusion based on the MSCP.

Subunit 1A, Cedar Canyon, Otay Mountain, San Diego County, California

Subunit 1A, Cedar Canyon, consists of 259 ac (105 ha) of land proposed for designation as critical habitat. Subunit 1A contains CNDDDB element occurrences #1, #13, and #16. Land in this subunit is entirely within the Cedar Canyon Area of Critical Environmental Concern (ACEC) and a Research Natural Area (RNA) (BLM 1994, pp. 1, 19, 22). The BLM has not yet developed a specific management plan that outlines how the species would be managed for in the Cedar Canyon ACEC and RNA. The majority of this subunit (145 ac (59 ha)) is managed by BLM as part of the Otay Mountain Wilderness Area. An additional 114 ac (46 ha) are on private land. This subunit was known to be occupied at the time of listing and contains all of the PCEs. This population requires special management considerations or protection to adequately protect it from negative impacts related to fire fighting activities and possible negative impacts from the growth of nonnative species that may

affect the space available for this species.

In 1998, when *Fremontodendron mexicanum* was federally listed, less than 100 individual plants were documented from Cedar Canyon. This occurrence was thought to be the only location where *F. mexicanum* occurred naturally in the United States. Prior to the 2003 fire, the canyon was dominated by Tecate cypress and riparian vegetation. In late 2005 and early 2006 when this canyon was surveyed for *F. mexicanum* by Service biologists, over 1,000 plants were found. Because this species is a facultative resprouter (*i.e.*, resprouts and produces seedlings after fire), this increase in numbers may be a result of the 2003 Otay fire that burned Cedar Canyon. This phenomenon of healthy *F. mexicanum* plants growing following fire was also recorded following a 1979 fire in Cedar Canyon (CNDDDB 2005 p. 1). Future monitoring of this occurrence of *F. mexicanum* will help determine if the number of plants recorded in 2005 and 2006 decline as other vegetation further recovers following the 2003 fire.

Subunit 1B, Little Cedar Canyon, Otay Mountain, San Diego County, California

Subunit 1B, Little Cedar Canyon, consists of 102 ac (42 ha) of land proposed for designation as critical habitat. This occurrence has not yet been assigned a number by the CNDDDB. Little Cedar Canyon is located approximately 1.9 miles (3 km) to the west of Cedar Canyon. Within this subunit, 83 ac (34 ha) of land are federally owned and managed by the BLM as part of the Otay Mountain Wilderness Area and 19 ac (8 ha) are on privately owned land. However, this area is not within the Cedar Canyon ACEC and RNA because the presence of

the species in Little Cedar Canyon was not known at the time the ACEC and RNA were created. Though only 26 plants were documented in Little Cedar Canyon in early 2006, these plants were healthy, and evidence of mature seed from 2005 was detected. Although this occurrence is a relatively small one when compared to the more than 1,000 plants in Cedar Canyon estimated in early 2006, the Little Cedar Canyon occurrence likely will help to stabilize the existence of *F. mexicanum* in the United States. Despite relatively few plants found in this canyon, the discovery of *F. mexicanum* in Little Cedar Canyon almost doubles the amount of known occupied habitat for this species in the United States. Prior to the 2003 fire, Little Cedar Canyon likely would have been difficult to survey due to thick riparian vegetation and chaparral. This subunit was not known to be occupied at the time of listing; however, it is considered to be essential to the conservation of this species. This subunit contains all of the PCEs. This population and the essential features within the unit require special management or protection to adequately protect it from negative impacts related to fire fighting activities and possible negative impacts from the growth of nonnative species that may affect the space available for this species.

Table 1 provides the approximate area (ac/ha) determined to meet the definition of critical habitat for *C. ophiochilus* and *F. mexicanum* and indicates the areas proposed for final designation and the areas proposed for exclusion from the final critical habitat designation under section 4(b)(2) of the Act (please see "Exclusions under Section 4(b)(2) of the Act" for a detailed discussion).

TABLE 1.—AREAS PROPOSED FOR FINAL CRITICAL HABITAT DESIGNATION FOR CEANOTHUS OPHIOCHILUS AND FREMONTODENDRON MEXICANUM, AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area proposed as final critical habitat	Area proposed for exclusion from final critical habitat
<i>Ceanothus ophiochilus</i>				
1. Western Riverside County				
1A. Vail Lake	Private	76 ac (31 ha)	0 ac (0 ha)	76 ac (31 ha)*.
1B. Agua Tibia Mountains	U.S. Forest Service	203 ac (82 ha)	203 ac (82 ha)	0 ac (0 ha).
	Private	4 ac (2 ha)	0 ac (0 ha)	4 ac (2 ha)*.
Subtotal		283 ac (115 ha)	203 ac (82 ha)	80 ac (33 ha).
<i>Fremontodendron mexicanum</i>				
1. Otay Mountain				
1A. Cedar Canyon	BLM	145 ac (59 ha)	145 ac (59 ha)	0 ac (0 ha).
	Private	114 ac (46 ha)	114 ac (46 ha)	0 ac (0 ha).
1B. Little Cedar Canyon	BLM	83 ac (34 ha)	83 ac (34 ha)	0 ac (0 ha).

TABLE 1.—AREAS PROPOSED FOR FINAL CRITICAL HABITAT DESIGNATION FOR CEANOTHUS OPHIOCHILUS AND FREMONTODENDRON MEXICANUM, AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT—Continued

Critical habitat unit	Land ownership	Area that meets the definition of critical habitat	Area proposed as final critical habitat	Area proposed for exclusion from final critical habitat
	Private	19 ac (8 ha)	19 ac (8 ha)	0 ac (0 ha).
Subtotal .....	.....	361 ac (147 ha)	361 ac (147 ha)	0 ac (0 ha).
Total .....	.....	644 ac (262 ha)	564 ac (229 ha)	80 ac (33 ha).

* Lands proposed for exclusion under section 4(b)(2) of the Act due to inclusion in the Western Riverside County MSHCP.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed

critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. “Reasonable and prudent alternatives” are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new

species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Ceanothus ophiochilus* and *Fremontodendron mexicanum* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Fremontodendron Mexicanum and Ceanothus Ophiochilus and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied and will apply an analytical framework for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* jeopardy analyses that rely heavily on the importance of core area occurrences to the survival and recovery of *C. ophiochilus* and *F. mexicanum*. The section 7(a)(2) analysis is focused not only on these occurrences but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Ceanothus ophiochilus* and *Fremontodendron mexicanum* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated

habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area occurrence to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum may be used to complete section 7(a)(2) analyses for Federal actions affecting *Ceanothus ophiochilus* and *Fremontodendron mexicanum* critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *C. ophiochilus* and *F. mexicanum* critical habitat units is to support viable core area occurrences.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *C. ophiochilus* and *F. mexicanum*, include, but are not limited to:

(1) Actions that would directly impact *C. ophiochilus* and *F. mexicanum* habitat. Such activities could include, but are not limited to, road grading, streambed clearing, the creation of firebreaks, and grading near these occurrences. These activities could change the physical and biological features of the habitat by affecting the topography of the site; removing soil and associated species; burying the appropriate soil for these species, making it unavailable for species growth and/or reproduction; or encouraging invasion by nonnative plant species;

(2) Actions that would alter fire frequency in the areas occupied by *C. ophiochilus*. Such activities could include, but are not limited to,

prescribed burns. These activities could alter the soil composition by increasing the nutrients in the soil; and

(3) Actions that would increase the presence of nonnative species. Such activities could include, but are not limited to, seeding areas with nonnative species following a fire and inadvertently introducing nonnative seed via machinery, vehicles, and field gear. These activities could reduce the ability of these two species to grow and produce seed because the nonnative species may crowd out or otherwise compete with *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. An increase presence of nonnative species could also change the fire regime as mentioned above or could alter the soil composition.

All lands proposed as critical habitat, including those that have been proposed for exclusion from the final designations, contain features essential to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. Except for the Little Cedar Canyon population of *F. mexicanum*, all subunits are within the geographic range of either species, and were known to be occupied at the time of listing. All of the subunits proposed for designation are currently occupied. Federal agencies already consult with us on activities in areas occupied by these species, or if either species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *C. ophiochilus* and *F. mexicanum*.

Exclusions Under Section 4(b)(2) of the Act

There are multiple ways to provide management for species' habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans, as well as management under Federal agencies' jurisdictions, can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that

provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section, the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered. In addition, the Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without

the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (*i.e.*, 90–100 percent of their known occurrences were restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to

future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (*e.g.*, reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a level of conservation superior to that of critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. Castle and Cooke Resorts, LLC, which owns 99 percent of the Island of Lanai, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats to these target species. These actions will significantly improve the habitat for all currently occurring species. Because of the low likelihood of a Federal nexus on the island, we believe this agreement provides a superior level of protection to the affected species than would be provided through the designation of critical habitat.

The Department's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect

threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (e.g., Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that those areas that contain the physical and biological features essential to the conservation of the species, or unoccupied areas that are essential to the conservation of the species, are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that

concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*), the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners,

State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional educational benefit gained from the designation of critical habitat in areas we are proposing to exclude in this rule. The educational benefit normally served by the designation of critical habitat has already been satisfied by other existing habitat management protections. These protections have provided State agencies and local governments, as well as Federal agencies with information on the areas that would benefit from the protection and enhancement of *Ceanothus ophiochilus* and *Fremontodendron mexicanum* habitat. Thus, in areas proposed to be excluded from critical habitat, we believe that the educational benefits have already been provided for.

The Service is conducting an economic analysis of the potential impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

The information provided in this section applies to all the discussions below on the benefits of inclusion and exclusion of critical habitat.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation

include relieving landowners, communities, counties, and States of any additional regulatory burden that may occur as a result of a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In addition, many conservation plans provide conservation benefits to unlisted sensitive species; measures designed to proactively protect species to ensure that listing under the Act will not be necessary. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these important conservation efforts and partnerships.

Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified in order for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

A related benefit of excluding lands within an HCP or management plan from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designation of lands within approved HCP or management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particular plans that address landscape-level conservation of species and their habitats. By excluding these lands, we preserve our current

partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon pursuant to section 7 of the Act. Such a consultation would review the effects of all activities covered by the HCP that might adversely impact the species under a jeopardy standard, including possible habitat modification even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act; (2) there is a reasonable expectation that the conservation management strategies and actions will be implemented based on past practices, written guidance, or regulations; and (3) the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology. We believe that the Western Riverside County MSHCP fulfills these criteria, and we are considering the exclusion of non-Federal lands covered by this plan that provide for the conservation of *Ceanothus ophiochilus* from the final designation of critical habitat pursuant to section 4(b)(2) of the Act. We are requesting comments on the benefit to *Fremontodendron mexicanum* from the San Diego MSCP and the 1994 MOU with BLM; however, at this time we are not proposing the exclusion of any areas in the proposed critical habitat for *F. mexicanum*.

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional habitat conservation plan (HCP) that addresses 146 listed and unlisted "Covered Species," including *Ceanothus ophiochilus*, within the 1,260,000 ac (510,000 ha) Plan Area in western Riverside County. Participants in the MSHCP include 14 cities in

western Riverside County; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation (Caltrans). The MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of Covered Species. On June 22, 2004, the Service issued a single incidental take permit pursuant to section 10(a)(1)(B) of the Act to 22 Permittees under the MSHCP for a period of 75 years. The Service granted the participating jurisdictions "take authorization" of listed species in exchange for their contribution to the assembly and management of the MSHCP Conservation Area. Collectively, the MSHCP Conservation Area includes MSHCP lands and additional Federal partner lands, and totals approximately 500,000 ac (202,343 ha).

The MSHCP will establish approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of existing natural and open space areas (e.g., State Parks, USFS, and County Park lands known as Public/Quasi-Public (PQP) Lands) in forming the MSHCP Conservation Area. The precise configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified in the MSHCP, but rather is based on textual descriptions within the bounds of a 310,000-ac (125,453-ha) Criteria Area that is interpreted as implementation of the MSHCP proceeds. For *Ceanothus ophiochilus*, critical habitat subunits 1A (Vail Lake) and 1B (Agua Tibia Wilderness) are located entirely within the MSHCP Plan Area and are comprised of USFS and private lands.

The private lands within these subunits are within the Criteria Area and are targeted for inclusion within the MSHCP Conservation Area as potential Additional Reserve Lands. Specific conservation objectives in the MSHCP for *Ceanothus ophiochilus* provide for conservation and management of at least 13,290 ac (5,378 ha) of suitable chaparral habitat and at least three core locations of this species in the vicinity of Vail Lake and the Agua Tibia Wilderness. Additionally, the plan requires surveys for *C. ophiochilus* as part of the project review process for public and private projects where

suitable habitat is present within a defined boundary of the Criteria Area (see Criteria Area Species Survey Area Map, Figure 6–2 of the MSHCP, Volume I). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met. We are currently only aware of three populations of *C. ophiophilus* in the MSHCP Conservation Area. The MSHCP recognizes these same three populations. The goal of the MSHCP is to conserve a minimum of three populations of *C. ophiophilus*. Although the specific location of individual target areas for this species has yet to be identified, we recognize that no other populations of the plant have been identified and agree that conservation of three populations of this plant through the survey requirements, avoidance and minimization measures, and management for *C. ophiophilus* (and its PCEs) exceed any conservation value provided as a result of any regulatory protections that may be afforded through a critical habitat designation over the three known populations.

We propose to exclude approximately 80 ac (33 ha) of non-Federal lands from the *Ceanothus ophiophilus* final critical habitat designation in subunits 1A and 1B within the MSHCP Plan Area under section 4(b)(2) of the Act. These non-Federal lands are comprised of private lands to the west of Vail Lake (approximately 76 ac (31 ha)) (subunit 1A) and private lands adjacent to the northern boundary of the Cleveland National Forest east of Woodchuck Road (approximately 4 ac (2 ha)) (subunit 1B).

The USFS lands within these subunits are considered PQP lands under the MSHCP and as such are included within the overall 500,000 ac (202,343 ha) MSHCP Conservation Area. While these Federal lands are managed by the USFS and are an integral part of the overall conservation strategy of the MSHCP, the USFS is not a permittee under the section 10(a)(1)(B) permit. Therefore, we are not excluding USFS lands within subunit 1B based on the MSHCP.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the proposed exclusion from the final designation of approximately 80 ac (33 ha) of critical habitat on non-Federal lands within the MSHCP Plan Area, and have determined that the benefits of proposing to exclude these non-Federal lands in subunits 1A and 1B outweigh the benefits of including these lands. The PCEs required by *Ceanothus*

ophiophilus will benefit by the conservation measures outlined in the MSHCP. In summary, these conservation measures include protecting and managing PCEs within the MSHCP Conservation Area, primarily through the protection of habitat from surface-disturbing activities; implementing specific management and monitoring practices to help ensure the conservation of *C. ophiophilus* and its PCEs in the Plan Area; maintaining the physical and ecological characteristics of occupied habitat; and conducting surveys and implementing other required procedures to ensure avoidance of impacts to at least 90 percent of suitable habitat areas determined important to the long-term conservation of *C. ophiophilus* within the Criteria Area. The specific area identified as Subunit 1A will be addressed under the MSHCP. These specific conservation actions, survey requirements, avoidance and minimization measures, and management for *C. ophiophilus* and its PCEs exceed any conservation value provided as a result of any regulatory protections that may be afforded through a critical habitat designation.

The exclusion of these lands from critical habitat will also help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP. The benefits of excluding these lands from critical habitat outweigh the minimal benefits of including these lands as critical habitat, including the educational benefits of critical habitat through informing the public of areas important for the long-term conservation of this species, because these educational benefits can still be accomplished from materials provided on our Web site. Further, many educational benefits of critical habitat designation will be achieved through the overall designation process and notice and public comment, and will occur whether or not these particular subunits are designated.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 80 ac (33 ha) from the final designation of critical habitat for *Ceanothus ophiophilus* will result in the extinction of the taxon because the Western Riverside County MSHCP provides for the conservation of this species and its PCEs on all known occupied areas within the county, including areas that may be newly discovered occupied areas in the future. Importantly, as we stated in our biological opinion, while some loss of

modeled habitat for *C. ophiophilus* is anticipated due to implementation of the MSHCP, we concluded that implementation of the plan will not jeopardize the continued existence of this species.

The jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The proposed exclusion of critical habitat leaves these protections unchanged from those that would exist if the proposed excluded areas were designated as critical habitat.

Economic Analysis

An analysis of the potential economic impacts of proposing critical habitat for *Ceanothus ophiophilus* and *Fremontodendron mexicanum* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.fws.gov/carlsbad/SpeciesInfo.htm> or by contacting the Carlsbad Fish and Wildlife Office directly (see ADDRESSES section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent peer reviewers regarding the science in this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed revised designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings

must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but 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 tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

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 need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under 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 under 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.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments. The draft economic analysis can be obtained from the internet Web site at <http://www.fws.gov/carlsbad/SpeciesInfo.htm> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a

statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is considered to be a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues. However, based on the extent of specific areas being proposed for designation, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, we do not believe that this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

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, 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; AFDC 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. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, 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) We do not anticipate that this rule will significantly or uniquely affect small governments due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we coordinated development and requested information on this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Ceanothus ophiochilus* and *Fremontodendron mexicanum* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the

provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no essential habitat for either *Ceanothus ophiochilus* or *Fremontodendron mexicanum* exists on tribal lands. Therefore, critical habitat for *C. ophiochilus* and *F. mexicanum* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h), revise the entry for “*Ceanothus ophiochilus*” and the entry for “*Fremontodendron mexicanum*” under “FLOWERING PLANTS” to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Ceanothus ophiochilus</i> .	* Vail Lake ceanothus	* U.S.A. (CA)	* Rhamnaceae	* T	* 648	* 17.96(a)	* NA
* <i>Fremontodendron mexicanum</i> .	* Mexican flannelbush	* U.S.A. (CA), Mexico	* Sterculiaceae	* E	* 648	* 17.96(a)	* NA
* 	* 	* 	* 	* 	* 	* 	*

3. Amend § 17.96(a), by adding an entry for *Ceanothus ophiochilus* (Vail Lake ceanothus) in alphabetical order under family Rhamnaceae and an entry for *Fremontodendron mexicanum* (Mexican flannelbush) in alphabetical order under family Sterculiaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering Plants.

* * * * *

Family Rhamnaceae: *Ceanothus ophiochilus* (Vail Lake ceanothus)

(1) Critical habitat units are depicted for Riverside County, California on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for *Ceanothus ophiochilus* are the habitat components that provide:

(i) Flat to gently sloping north to northeast facing ridge tops with slopes in the range of 0 to 40 percent slope that provide the appropriate solar exposure for seedling establishment and growth.

(ii) Soils formed from metavolcanic and ultra-basic parent materials and deeply weathered gabbro or pyroxenite-rich outcrops that provide nutrients and space for growth and reproduction. Specifically in the areas that *Ceanothus ophiochilus* is found, the soils are:

(A) Ramona, Cienaba, Las Posas, and Vista series in the Agua Tibia Wilderness; and

(B) Cajalco series in the vicinity of Vail Lake;

(iii) Chamise chaparral or mixed chamise-ceanothus-arctostaphylos chaparral at elevations of 2,000 ft to 3,000 ft (610 m to 914 m) that provide the appropriate canopy cover and elevation requirements for growth and reproduction.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1.

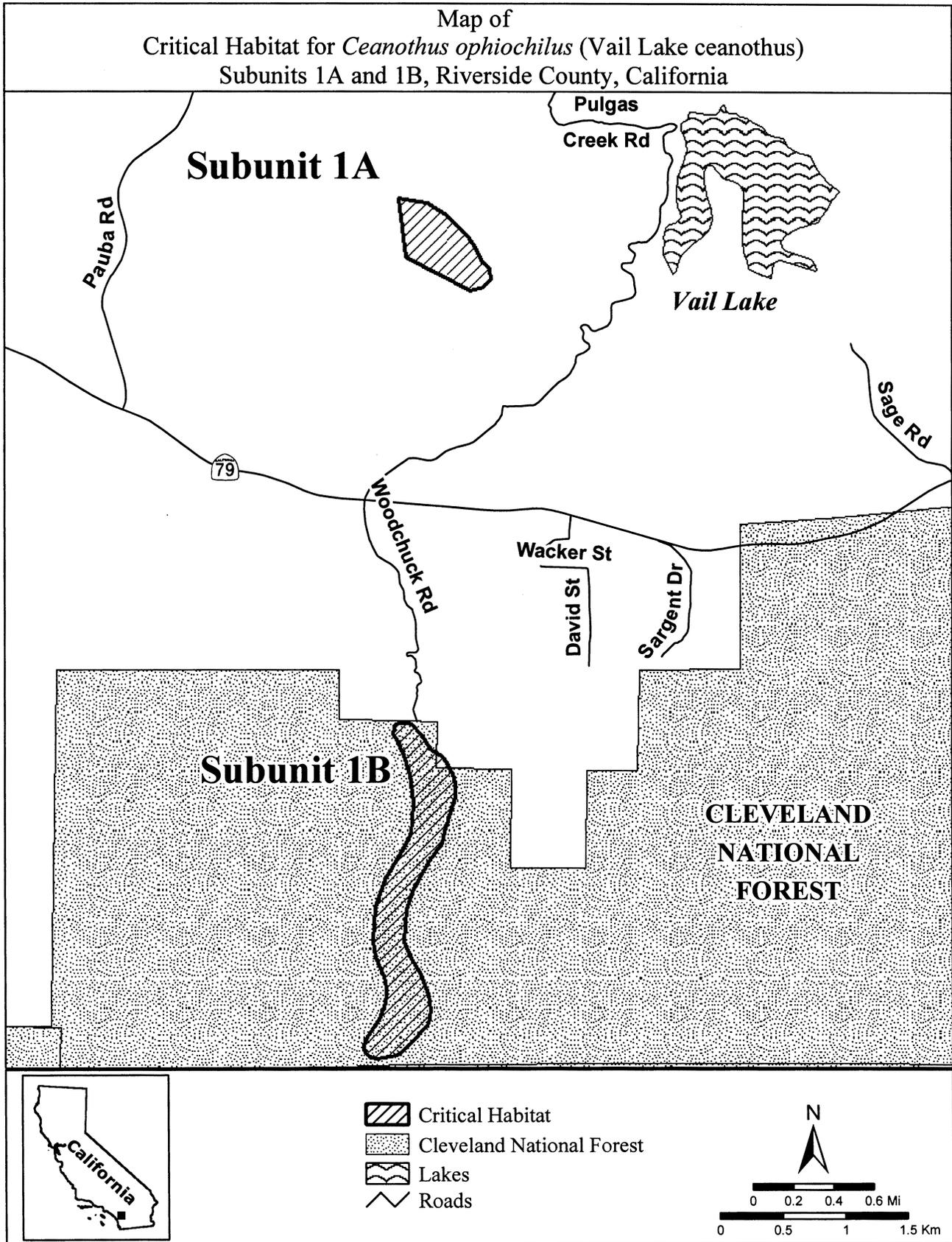
(i) Subunit 1A for *Ceanothus ophiochilus*, Vail Lake Subunit, Riverside County, California. From USGS 1:24,000 quadrangles Pechanga and Vail Lake, lands bounded by the following UTM NAD27 coordinates (E, N): 499944, 3705490; 500174, 3705450; 500339, 3705344; 500489, 3705188; 500546, 3705102; 500615, 3704967; 500677, 3704920; 500682, 3704828; 500626, 3704765; 500519, 3704736; 500004, 3705012; thence returning to 499944, 3705490.

(ii) Map depicting Subunit 1A is located at paragraph (5)(iv) of this entry.

(iii) Subunit 1B for *Ceanothus ophiochilus*, Agua Tibia Subunit, Riverside County, California. From

USGS 1:24,000 quadrangles Pechanga and Vail Lake, lands bounded by the following UTM NAD27 coordinates (E, N): 499902, 3701154; 499909, 3701222; 499950, 3701238; 500022, 3701235; 500060, 3701218; 500091, 3701184; 500127, 3701138; 500158, 3701092; 500191, 3701048; 500226, 3701010; 500247, 3700998; 500262, 3700990; 500273, 3700981; 500294, 3700965; 500326, 3700909; 500351, 3700872; 500353, 3700869; 500362, 3700855; 500375, 3700824; 500398, 3700735; 500400, 3700646; 500370, 3700546; 500308, 3700359; 500293, 3700272; 500173, 3700102; 500057, 3699889; 500008, 3699730; 499990, 3699595; 499988, 3699460; 500022, 3699376; 500045, 3699326; 500113, 3699213; 500179, 3699040; 500199, 3698902; 500173, 3698801; 500010, 3698618; 499966, 3698566; 499920, 3698544; 499823, 3698518; 499757, 3698516; 499704, 3698537; 499671, 3698570; 499655, 3698612; 499671, 3698670; 499783, 3698843; 499834, 3698968; 499840, 3699020; 499840, 3699090; 499819, 3699185; 499755, 3699338; 499731, 3699474; 499757, 3699750; 499838, 3699993; 499974, 3700214; 500037, 3700349; 500055, 3700453; 500063, 3700594; 500033, 3700813; 499984, 3700976; 499924, 3701105; thence returning to 499902, 3701154.

(iv) Map of Subunits 1A and 1B (Map 1) follows.



Family Sterculiaceae: *Fremontodendron mexicanum* (Mexican flannelbush)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Fremontodendron mexicanum* are the habitat components that provide:

(i) Alluvial terraces, benches, and associated slopes within 500 feet (152 meters) of streams, creeks, and ephemeral drainages where water flows primarily after peak seasonal rains with a gradient ranging from 3 to 7 percent; and stabilized north- to east-facing slopes associated with steep (9 to 70 percent) slopes and canyons that provide space for growth and reproduction.

(ii) Silty loam soils derived from metavolcanic and metabasic bedrock, mapped as San Miguel—Exchequer Association soil series that provides the nutrients and substrate with adequate drainage to support seedling establishment and growth.

(iii) Open *Cupressus forbesii* and *Platanus racemosa* stands at elevations of 900 ft (274 m) to 3,000 ft (914 m)

within a matrix of chaparral (such as *Dendromecon rigida* ssp. *rigida* and *Malosma laurina*) and riparian vegetation that provides adequate space for growth and reproduction.

(3) Critical habitat does not include man made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1.

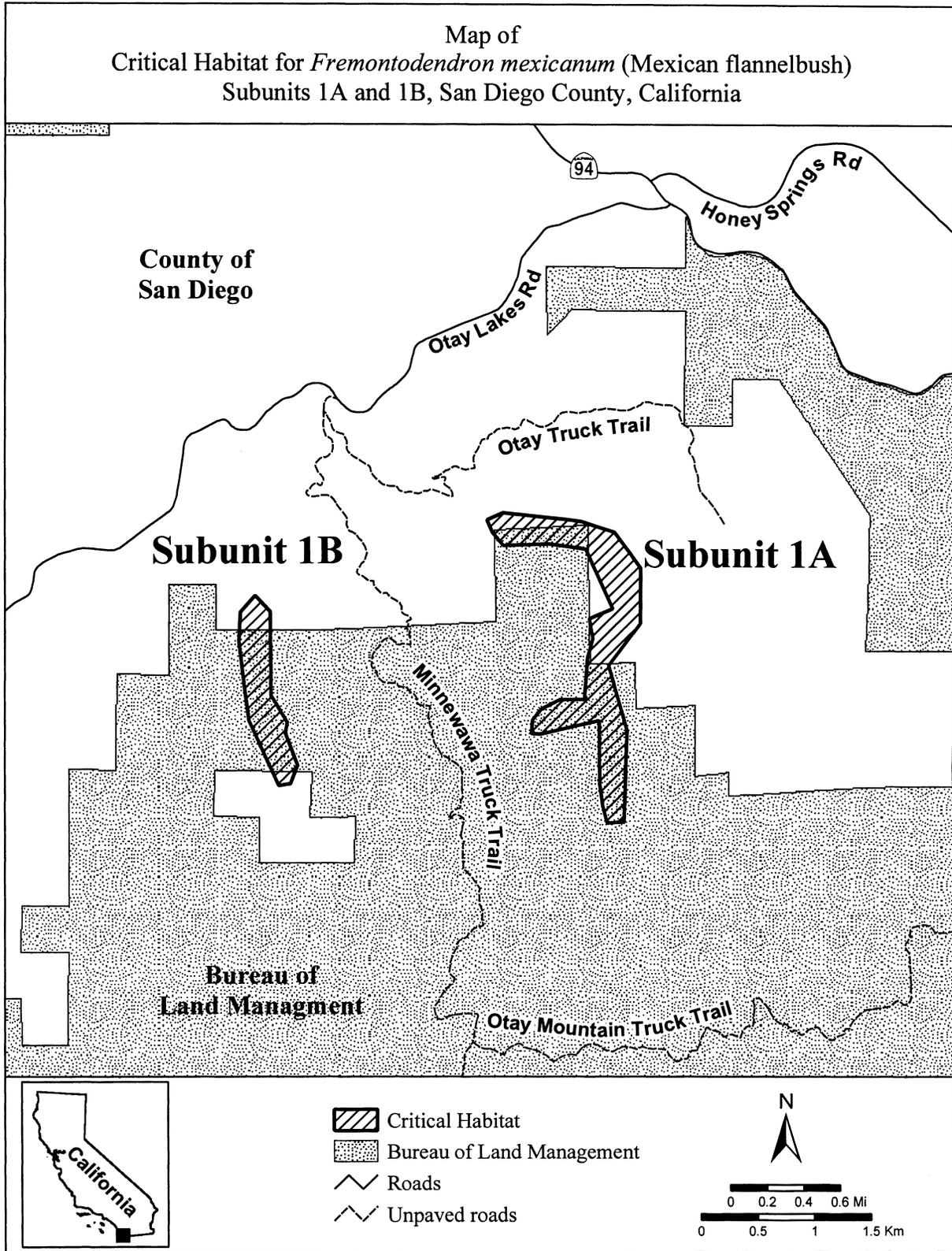
(i) Subunit 1A for *Fremontodendron mexicanum*, Cedar Canyon Subunit, San Diego County, California. From USGS 1:24,000 quadrangles Dulzura and Otay Mountain, lands bounded by the following UTM NAD27 coordinates (E, N): 515014, 3611487; 515155, 3611552; 515695, 3611495; 515848, 3611474; 516142, 3611376; 516372, 3611063; 516368, 3610565; 516091, 3610192; 516251, 3609616; 516229, 3608802;

516080, 3608793; 516038, 3608958; 516013, 3609134; 516008, 3609701; 515493, 3609581; 515407, 3609585; 515418, 3609710; 515497, 3609804; 515663, 3609889; 515878, 3609887; 515904, 3610258; 515952, 3610432; 515921, 3610608; 516125, 3610698; 515989, 3611007; 515889, 3611230; 515567, 3611277; 515159, 3611261; 515064, 3611374; thence returning to 515014, 3611487.

(ii) Map depicting Subunit 1A is located at paragraph (5)(iv) of this entry.

(iii) Subunit 1B for *Fremontodendron mexicanum*, Little Cedar Canyon Subunit, San Diego County, California. From USGS 1:24,000 quadrangles Dulzura and Otay Mountain, lands bounded by the following UTM NAD27 coordinates (E, N): 512964, 3610810; 513099, 3610671; 513104, 3609924; 513252, 3609684; 513232, 3609584; 513344, 3609302; 513278, 3609139; 513174, 3609122; 512911, 3609699; 512854, 3610125; 512821, 3610402; 512834, 3610662; thence returning to 512964, 3610810.

(iv) Map of Subunits 1A and 1B (Map 2) follows.



* * * * *

Dated: September 18, 2006.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06-8189 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Plymouth Redbelly Turtle (*Pseudemys rubriventris bangsi*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Plymouth redbelly turtle (*Pseudemys rubriventris bangsi*), now referred to as the Plymouth (or northern) red-bellied cooter (*P. rubriventris*), from the Federal List of Threatened and Endangered Wildlife under the Endangered Species Act of 1973, as amended (Act). We find that the petition and additional information in our files presents substantial information indicating that delisting the Plymouth red-bellied cooter may be warranted, and we are therefore initiating a status review. To assist us in ensuring that the review is comprehensive, we are soliciting information and data regarding this species.

DATES: The administrative finding announced in this document was made on October 3, 2006. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by December 4, 2006.

ADDRESSES: Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor (*Attention:* Endangered Species), New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. The petition, administrative record, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael J. Amaral, Sr. Endangered Species Specialist, at the New England

Field Office (see **ADDRESSES** above), or at 603-223-2541.

SUPPLEMENTARY INFORMATION:**Public Information Solicited**

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. We intend that any final action resulting from this status review will be as accurate and effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We would be particularly interested in any data indicating that the Plymouth red-bellied cooter may qualify for protection under the Act as a distinct population segment per standards as described in the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (February 7, 1996; 61 FR pages 4722) or as part of some larger taxonomic entity that is threatened or endangered. We are opening a 60-day public comment period (see **DATES**) to allow all interested parties an opportunity to provide information on the status of the Plymouth red-bellied cooter throughout its range, including information on the species' biology and ecology; its genetics and taxonomic classification; the historic and current abundance and distribution of the Plymouth, Massachusetts population; ongoing conservation measures for the species and its habitat; and the threats facing the Plymouth red-bellied cooter in relation to the five listing factors (as defined in section 4(a)(1) of the Act).

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to provide comments you may submit your comments and materials concerning this finding to the Field Supervisor, New England Field Office (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the

conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that 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.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our New England Field Office (see **ADDRESSES**).

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of the receipt of the petition and publish a notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species. After completing the status review, we will issue a 12-month finding determining whether delisting or an alternative action is warranted.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species

only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Petition

On February 8, 1997, we received a petition from the National Wilderness Institute dated February 3, 1997, requesting that we remove the "Redbelly turtle (*P. r. bangsi*)" from the List of Threatened and Endangered Wildlife on the basis of data error. The petition was clearly identified as such. We acknowledged receipt of the petition in a June 29, 1998, letter that further explained our inability to undertake prompt action because of the low priority assigned to delisting petitions in the Listing Priority Guidance for Fiscal Years 1998 and 1999, which was published in the **Federal Register** on May 8, 1998 (63 FR 25502). Since 1999, higher priority work has precluded us from acting on the petition to delist the Plymouth red-bellied cooter.

The petition focuses solely on the question of validity of the subspecies *bangsi* and cites only unpublished data

and an alleged excerpt from the 1981 *Plymouth Red Bellied Turtle Recovery Plan* (recovery plan). The petitioner provided no new data on the taxonomy of, status of, or threats to the Plymouth red-bellied cooter, and provided no bibliography of published literature on the species. Other available information, including published data (e.g., Iverson and Graham 1990, pp. 1–13) and two subsequent recovery plan revisions (USFWS 1985, pp. 1–28; USFWS 1994, pp. 1–39), was not included or cited in the petition.

A review of the 1981 recovery plan found that the plan does not contain the quote cited by the petitioner as the basis for the cooter being listed due to data error. However, the 1985 first recovery plan revision does contain the cited information (USFWS 1985, p. 2). Information in Service files confirms that herpetologists generally concur that the Plymouth, Massachusetts, population is a disjunct occurrence of *Pseudemys rubriventris*, a species that is more widely distributed in the mid-Atlantic States, and not a distinct subspecies as described by Babcock (1937, p. 293).

Finding

We have reviewed the petition, the literature cited in the petition, and

information in our files. On the basis of our review, we find that there is substantial information indicating that the petitioned action may be warranted, and we are initiating a status review of the species. At the conclusion of the status review, we will issue a 12-month finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not delisting is warranted.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, New England Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Michael J. Amaral, New England Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2006.

Marshall Jones,

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

[FR Doc. E6–16057 Filed 10–2–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 191

Tuesday, October 3, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Glenda Shoots, 202-622-9383.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 13, 2006.

Zenaida Samangio,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. E6-16244 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

MEETING: African Development Foundation, Board of Directors Meeting.

TIME: Tuesday, October 10, 2006, 9 a.m. to 5 p.m.

PLACE: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

DATE: Tuesday, October 10, 2006.

STATUS:

1. Open session, October 10, 2006, 9 a.m. to 9:15 a.m.;
2. Closed session, October 10, 2006, 9:15 a.m. to 12:15 p.m.; and,
3. Open session, October 10, 2006, 12:15 p.m. to 5 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open sessions of the meeting must notify Doris Martin, General Counsel, at (202) 673-3916 or mrivard@adf.gov of your request to attend by noon on Thursday, October 5, 2006.

Rodney J. MacAlister,
President.

[FR Doc. 06-8474 Filed 9-29-06; 11:26 am]

BILLING CODE 6117-01-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Addition of a New System of Records; USDA/OES, Enterprise Content Management

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of new system of records; request for comment.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA) gives notice of a new Privacy Act system of records and invites public comment on this new records system.

DATES: This notice will be adopted without further publication in the **Federal Register** on December 4, 2006 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for

comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Director of the Office of the Executive Secretariat (OES), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-3300, telephone: (202) 720-7100.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records, Enterprise Content Management (ECM) to be maintained by the Office of the Executive Secretariat. ECM is based upon a suite of document management applications that have been specifically designed for use by the employees and officers of USDA to manage documents associated with a wide range of administrative and business processes. At present, there are three components or modules that comprise ECM, the Enterprise Correspondence Management Module (ECMM), the General Use Module (GUM), and the Content Analysis Module (CAM). ECMM is designed and operated to support effective management of executive correspondence and other external and internal documents with similar internal business processes. GUM is designed to support effective management of internal business documents. CAM is designed to assist in the analysis and management of public and internal comments related to USDA programs and received in response to requests for such comments.

ECMM does include information regarding individuals, primarily information such as the name and address incident to their correspondence addressed to the Secretary of Agriculture and various other officers and employees of USDA. In a few cases, it includes supplementary information about the individual, most often voluntarily provided by that individual. The purpose of ECMM is to help USDA employees manage correspondence and other documents at any organizational level from initial receipt through completion and archival storage. Department officials are included in the correspondence drafting and policy making process through a managed clearance and control system. The system's workflow capabilities enable documents to be routed within or

among USDA agencies and offices for collaborative input or review, and security that ensures information is available only to authorized personnel.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by the Office of Management and Budget (OMB) Circular A-130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform and Oversight, House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Signed at Washington, DC, on September 27, 2006.

Mike Johanns,
Secretary of Agriculture.

SYSTEM NUMBER:

USDA/OES-1.

SYSTEM NAME:

USDA Enterprise Content Management (ECM).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system is hosted on computers located within secure computing environments at the National Information Technology Center in Kansas City, Missouri, and at the Information Technology Services Web Farm in St. Louis, Missouri. Use of the application is restricted to authorized users within USDA, and the applications are restricted to authorized computers. Access is through the USDA Intranet.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals corresponding with USDA, from the public, private, and political sectors; system users, managers, and Systems Administrators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence inquiries from the public, private, political, and internal sectors, and related documents, from the beginning of the inquiry up to and including the resolution and response back to the originator. Lists and databases will eventually be added using the other document management applications designed for use by the employees and officers of USDA to manage documents associated with a wide range of administrative and business processes. This information is not likely to relate to individuals, but to internal directives, budget, or scientific research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 44 U.S.C. 3012; the Government Paperwork Elimination Act ("GEPA"), Pub. L. 105-277, 5 U.S.C. 3504 note; the Paperwork Reduction Act, 44 U.S.C. 3501 to 3520; the E-Government Act of 2002, 44 U.S.C. 3541, *et seq.*

PURPOSE(S):

The ECM system is designed for use by the employees and officers of USDA to manage documents associated with a wide range of administrative and business processes. At present, there are three components or modules that comprise ECM, the Enterprise Correspondence Management Module (ECMM), the General Use Module (GUM), and the Content Analysis Module (CAM). ECMM is designed and operated to support effective management of executive correspondence and other external and internal documents with similar internal business processes. GUM is designed to support effective management of internal business documents. CAM is designed to assist in the analysis and management of public and internal comments related to USDA programs and received in response to requests for such comments. Any information about an individual is usually provided by that individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

1. Information may be disclosed to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law, rule, or regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity.

2. Information may be disclosed to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

3. Information may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. In such cases, however, the

Member's right to a record is not greater than that of the individual.

4. Records from this system of records may be disclosed to the National Archives and Records Administration and to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

5. Information may be disclosed to agency contractors, experts, and consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in hard copy formats and computer processible storage media.

RETRIEVABILITY:

These records may be retrieved by the document control number, date, name of correspondent, or subject.

SAFEGUARDS:

Computer records are maintained in a secure password-protected environment; and access is limited to those who have a need to know. Permission level assignments allow users access only to those functions for which they are authorized. System users, managers, and ECM System Administrators have access to the data in the system. Access is controlled by the eAuthentication System on the USDA Intranet, and roles are determined by the application administrators. Paper records are maintained in a secure, limited-access area, which is locked during non-duty hours, and which requires a USDA employee identification badge or visitor pass to enter.

RETENTION AND DISPOSAL:

The retention of data in the system is in accordance with applicable USDA Records Disposition Schedules as approved by the National Archives and Records Administration. Hard copy records are maintained by varying periods of time, and temporary records are disposed of by shredding when the retention period is complete.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of the Executive Secretariat, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURES:

Individuals who want to know whether this system of records contains information about them, who want to access their records, or who want to contest the contents of a record, should make a written request to the Director, Office of the Executive Secretariat, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. Individuals must furnish the following information for their records to be located and identified:

A. Full name or other identifying information necessary or helpful in locating the record;

B. Why you believe the system may contain your personal information;

C. A statement indicating the type of request being made (*i.e.*, access, correction or amendment) and whether a personal inspection of the records or a copy of them by mail is desired;

D. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should follow the Notification Procedures. Individuals requesting access are also required to provide adequate identification, such as a driver's license, employee identification card, social security card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORD PROCEDURES:

Individuals requesting correction or amendment of their records should follow the Notification Procedures and the Record Access Procedures and also identifying the record or information to be changed, giving specific reasons for the change.

RECORD SOURCE CATEGORIES:

Information in this system of records is primarily provided by the individual corresponding with USDA or Agency officials, such as managers and supervisors, responding to individuals or Members of Congress.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06-8418 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service**

[Docket Number FV-05-303]

United States Standards for Grades of Bunched Italian Sprouting Broccoli

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the voluntary United States Standards for Grades of Bunched Italian Sprouting Broccoli. AMS is revising the standards to include provisions for certifying and grading broccoli crowns and florets. Specific size requirements for broccoli crowns and florets are being established. Additionally, the size requirements for the U.S. Fancy grade are being revised to provide minimum and maximum lengths for broccoli bunches "unless otherwise specified." AMS is also revising the size specification section to allow percentages to be determined "by weight," as well as "by count," when fairly uniform in size. AMS is adding a definition for fairly uniform and definitions for the terms florets and crowns and revising the definition for diameter. AMS is defining and adding "same type" to the requirements for each of the grades. AMS is eliminating the unclassified category. Additionally, AMS is revising the title of the standards to United States Standards for Grades of Italian Sprouting Broccoli as the standards will now apply to multiple forms of broccoli. These changes are made to update the broccoli grade standards and better reflect current marketing practices.

DATES: *Effective Date:* November 2, 2006.

FOR FURTHER INFORMATION CONTACT:

Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250-0240, Fax (202) 720-8871 or call (202) 720-2185; E-mail Cheri.Emery@usda.gov. The revised United States Standards for Grades of Italian Sprouting Broccoli will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as

amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the United States Standards for Grades of Bunched Italian Sprouting Broccoli using the procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1943.

Background

On April 21, 2005, AMS published a notice in the **Federal Register** (70 FR 20730) soliciting comments for possible revisions of the United States Standards for Grades of Bunched Italian Sprouting Broccoli. Based on the comments received and information gathered, AMS developed revised grade standards for broccoli. AMS published a notice in the February 28, 2006, **Federal Register** (71 FR 10001) soliciting comments for the possible revision of the United States Standards for Grades of Bunched Italian Sprouting Broccoli. In response to this notice, AMS received two comments on the proposed revisions. One comment received was from an agricultural trade association and the other from a grower. The comments received are available by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/fv/fpbdoctlist.htm>.

The agricultural trade association supported including broccoli crowns and florets into the United States Standards for Grades of Bunched Italian Sprouting Broccoli. They also supported having maximum stem lengths for broccoli crowns. AMS is establishing sizes for minimum and maximum lengths for the U.S. Fancy and U.S. No. 1 grades of broccoli for crown and floret styles. The requirements include the option for minimum and maximum lengths to be "unless otherwise specified." AMS is also establishing sizes for minimum and maximum diameter for the U.S. Fancy grade for

crowns and florets as well as for florets in the U.S. No. 1 grade. AMS has also included the option for diameter to be specified in connection with the U.S. No. 1 grade for broccoli crowns. The U.S. Fancy grade length requirements for bunched broccoli is being revised to provide for minimum and maximum lengths "unless otherwise specified." The sizes for the U.S. Fancy grades and the U.S. No. 1 grades are as listed. The sizes for the U.S. Fancy grades are as follows: For Bunched Broccoli. (a) The diameter of each stalk shall be not less than 2½ inches. Unless otherwise specified, the length of each stalk shall be not less than 6 inches or more than 8½ inches. For Broccoli Crowns. (b) The diameter of each crown shall be not less than 2½ inches or more than 5 inches. Unless otherwise specified, the length of each stalk shall be not less than 2½ inches or more than 5 inches. For Broccoli Florets. (c) The diameter of each floret shall be not less than ¾ inch or more than 3 inches. Unless otherwise specified, the length of each stem shall not be less than 1 inch or more than 3½ inches. The sizes for the U.S. No. 1 grades are as follows: For Bunched Broccoli. (a) There are no requirements for diameter but diameter may be specified for any lot as set forth in "Size specifications" section. Unless otherwise specified, the length of each stalk shall be not less than 5 inches or more than 9 inches. For Broccoli Crowns. (b) There are no requirements for diameter but diameter may be specified for any lot as set forth in "Size specifications" section. Unless otherwise specified, the length of each crown shall be not less than 3½ inches or more than 6 inches. For Broccoli Florets. (c) The diameter of each floret shall be not less than 1 inch or more than 4 inches. Unless otherwise specified, the length of each floret shall not be less than 1½ inch or more than 4½ inches.

The association also wanted bunched broccoli to contain more than one stalk. AMS disagrees with this comment because, as defined in the standards, "Bunch" means: "Stalks bound together to form a unit. A single stalk may be considered a bunch if it is approximately as large as other bunches in the lot." AMS believes that this definition offers flexibility to the industry and will keep that option available.

The grower requested, that the Department consider allowing the sale of broccoli crowns as a unit or an individual item, without a weight statement. The United States Standards issued under the 1946 Act does not regulate the sale of graded commodities.

However, AMS is revising the size specification section of the standards to provide percentages to be determined and certified individually "by weight" as well as "by count" when fairly uniform.

AMS is revising the title of the standards to United States Standards for Grades of Italian Sprouting Broccoli as these standards now will apply to broccoli crowns, florets, and bunched broccoli. AMS is revising the size specification section to allow percentages to be determined "by weight" as well as "by count" when fairly uniform, in order to increase the efficiency of inspections. AMS is defining "fairly uniform" since it is referenced in the standards but not currently defined. "Fairly uniform" means: (a) For bunched broccoli: Bunches are considered fairly uniform if the diameter of the bunches within the container do not vary more than three inches. (b) For broccoli crowns: Crowns are considered to be fairly uniform if the diameter of the crowns within the container do not vary more than three inches. (c) For broccoli florets: Florets are considered fairly uniform if the diameter of the florets within the sample do not vary more than 1½ inches. Additionally, AMS is adding definitions for florets and crowns. "Florets" or "Florettes" means the main stem is cut back considerably and only a single smaller secondary stem remains with the bud cluster. Florets are bud clusters or pieces of the bud cluster that have been closely trimmed from the head. Crowns or Crown cuts are defined as: "Crowns" mean the main stem is cut back from a portion of the broccoli plant including the stems which are of lengths according to the grade applied, bud clusters, and leaves. The definition for diameter is revised to: "Diameter" means the measurement across the bud cluster. With the inclusion of crowns and florets in the standards, AMS is adding "same type" to the requirements for the grades and defining "same type" as: "Same type" means lots shall consist of broccoli with similar type characteristics, i.e., bunched can not be mixed with florets.

AMS is eliminating the unclassified category. This category is being removed from all standards when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

The official grades of broccoli covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh

Fruits, Vegetables and Other Products (7 CFR 51.1 to 51.62).

The United States Standards for Grades of Italian Sprouting Broccoli will become effective 30-days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621—1627.

Dated: September 25, 2006.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. E6-16256 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Reporting System, Management Evaluation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection for which approval from the Office of Management and Budget (OMB) will be requested. The proposed collection would be an extension of a currently approved collection under OMB No. 0584-0010 which is due to expire January 31, 2007.

DATES: Written comments must be submitted on or before December 4, 2006.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Moira Johnston, Senior Program Analyst, Program Design Branch, Food Stamp Program, Food and Nutrition

Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection form and instruction should be directed to Moira Johnston, (703) 305-2515.

SUPPLEMENTARY INFORMATION:

Title: Performance Reporting System, Management Evaluation.

OMB Number: 0584-0010.

Expiration Date: January 31, 2007.

Type of Request: Revision of a currently approved information collection.

Abstract: The purpose of the Performance Reporting System (PRS) is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the requirements of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2011, *et seq.*), as amended, and corresponding program regulations. Under Section 11 of the Act (7 U.S.C. 2020), State agencies must maintain necessary records to ascertain that the Food Stamp Program is operating in compliance with the Act and regulations and must make these records available to the Food and Nutrition Service (FNS) for inspection and audit.

Management Evaluation (ME) Review Schedules—Unless the State receives approval for an alternative Management Evaluation review schedule, each State agency is required, under 7 CFR part 275, to submit one review schedule every one, two, or three years, depending on the project area make-up of the State.

Data Analysis—Under 7 CFR part 275, each State must establish a system for analysis and evaluation of all data available to the State. Data analysis and evaluation is an ongoing process that facilitates the development of effective and prompt corrective action.

Corrective Action Plans—Under 7 CFR part 275, State agencies must prepare a corrective action plan (CAP) addressing identified deficiencies. The State agencies must develop a system for monitoring and evaluating corrective action and submit CAP updates, as necessary.

Affected Public: State and local agencies.

Estimated Number of Respondents: 1,484.

Number of responses per respondent: 1.04.

Estimated total annual responses: 1,592.

Hours per response: 319.

Estimated Annual Reporting Burden: 490,736.

Number of record keepers: 54.

Estimated annual hours per record keepers: 30.

Estimated annual recordkeeping burden: 1,620 hours.

Total annual reporting and recordkeeping hours: 492,356.

Dated: September 27, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E6-16272 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on the following dates: October 16, October 24, November 8, November 17, and December 6, 2006. All of these meetings (except the November 17 meeting) will be held at the Okanogan and Wenatchee National Forests Headquarters office, 215 Melody Lane, Wenatchee, WA. The meeting on November 17 will be held at Chelan County Fire District #1, 206 Easy Street, Wenatchee, WA. These meetings will begin at 9:30 a.m. and continue until 3 p.m. During these meetings Provincial Advisory Committee members will continue the collaboration process on forest plan issues relating to the preparation of a revised forest plan for the Okanogan and Wenatchee National Forests. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509-664-9200.

Dated: September 27, 2006.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 06-8454 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of Soil Scientist Specialist Report

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: The Soil Scientist Specialist Report for the Basin Creek Hazardous Fuels Reduction Project Soil Productivity Best Management Practices Monitoring Compliance with Regional Soil Quality Standards is available for public review and comment. This report supplements the soils effects described in the Soils Section of the 2004 Basin Creek Hazardous Fuels Reduction Final Environmental Impact Statement.

DATES: Submit comments on or before November 17, 2006.

ADDRESSES: To send comments use the following mailing addresses:

(1) *U.S. Postal Service or hand-delivered comments:* Beaverhead-Deerlodge National Forest, Attention: Leaf Magnuson, 420 Barrett St, Dillon, MT 59725.

(2) *E-mail: comments-northern-beaverhead-deerlodge-butte@fs.fed.us.*

(3) *Fax:* 406-683-3855 Attn: Leaf Magnuson.

FOR FURTHER INFORMATION CONTACT:

Cindy Tencick, 406-683-3930.

Dated: September 26, 2006.

Peri R. Suenram,

Planning, Budget, Systems Staff Officer.

[FR Doc. E6-16317 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-83-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Equine Survey.

DATES: Comments on this notice must be received by December 4, 2006 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to gmcbride@nass.usda.gov.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Equine Survey.

OMB Number: 0535-0227.

Expiration Date: 02/28/2007.

Type of Request: Intent to Request Revision and Extension of a Currently Approved Information Collection.

Abstract: To improve information regarding the equine industry, several State Departments of Agriculture are expected to contract with the National Agricultural Statistics Service to conduct an Equine Survey in their State within the next 3 years. Equine activities offer unusually varied opportunities for rural development. In addition to providing the livelihood for breeders, trainers, veterinarians, and many others, the horse remains important to recreation. The number of operations, number of animals, and economic information will quantify the importance of the equine industry to State economies. Income data provides a view of the benefits that the industry provides to the State economy and a ranking of its relative importance within both the agricultural sector and the State's total economic sector. The expenditure information provides data regarding the multiplier effect of money from the equine industry, effects of wage rates paid to both permanent and part-time employees, and secondary businesses supported by the industry. NASS intends to request that the survey be approved for 3 years. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents: 45,000.

Estimated Total Annual Burden on Respondents: 22,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720-5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 28, 2006.

R. Ronald Bosecker,
NASS Administrator.

[FR Doc. 06-8428 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) for the Coal Creek Flood Control and Parkway Final Environmental Impact Statement is now available to the public. On September 1, 2006, the Natural Resources Conservation Service (NRCS) published a Final Environmental Impact Statement consistent with the National Environmental Policy Act of 1969, as amended, to disclose potential effects to the human environment resulting from proposed flood control improvements to Coal Creek in Cedar City, Utah. The ROD authorizes implementation of Alternative C (Replace Main Street diversion/drop structure) in conjunction

with the North Field Canal Option and Parkway Option C1.

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Marnie Wilson, Coal Creek EIS, USDA-NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138-1100. Project information is also available on the Internet at: <http://www.ut.nrcs.usda.gov> under Public Notices.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS and ROD are available by request from Marnie Wilson at the address listed above. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist.

Signed in Salt Lake City, Utah on September 21, 2006.

Sylvia A. Gillen,
State Conservationist.

[FR Doc. E6-16373 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business—Cooperative Service.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request information collection in support of the Rural Business Enterprise Grant (RBEG) program and Televisions Demonstration Grants (7 CFR part 1942-G).

DATES: Comments on this notice must be received by December 4, 2006 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Cindy Mason, Specialty Lenders Division, Rural Business—Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250-3225, telephone (202) 690-1433.

ADDRESSES: Submit written comments on the collection of information to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400

Independence Avenue, SW.,
Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Enterprise Grants and Televisions Demonstration Grants.

OMB Number: 0570-0022.

Expiration Date of Approval: January 1, 2007

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the rural residents. The regulation contains various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to determine eligibility; the specific purpose for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.5 hours per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 720.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Responses: 8,640.

Estimated Number of Hours Per Response: 2.5.

Estimated Total Hours: 21,600 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692-0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will

have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: September 26, 2006.

Jackie J. Gleason,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E6-16286 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, hereby announces the depreciation rates for telecommunications plant for the period ending December 31, 2005.

DATES: These rates are effective immediately and will remain in effect until rates are available for the period ending December 31, 2006.

FOR FURTHER INFORMATION CONTACT:

Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Development Utilities Programs, STOP 1590—Room 5151, 1400 Independence Avenue, SW., Washington, DC 20250-1590. Telephone: (202) 720-9556.

SUPPLEMENTARY INFORMATION: In the USDA Rural Development regulation 7 CFR part 1737, Pre-Loan Policies and Procedures Common to Insured and Guaranteed Telecommunications Loans, section 1737.70(e) explains the depreciation rates that are used by USDA Rural Development in its

feasibility studies. Section 1737.70(e)(2) refers to median depreciation rates published by USDA Rural Development for all borrowers. The following chart provides those rates, compiled by USDA Rural Development, for the reporting period ending December 31, 2005:

MEDIAN DEPRECIATION RATES OF USDA RURAL DEVELOPMENT BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDING DECEMBER 31, 2005

Telecommunications plant category	Depreciation rate
1. Land and Support Assets:	
a. Motor Vehicles	16.00
b. Aircraft	10.00
c. Special purpose vehicles	12.00
d. Garage and other work equipment	10.00
e. Buildings	3.20
f. Furniture and Office equipment	10.00
g. General purpose computers	20.00
2. Central Office Switching:	
a. Digital	8.45
b. Analog & Electro-mechanical	10.00
c. Operator Systems	10.00
3. Central Office Transmission:	
a. Radio Systems	9.24
b. Circuit equipment	10.00
4. Information origination/termination:	
a. Station apparatus	12.00
b. Customer premises wiring	10.00
c. Large private branch exchanges	12.50
d. Public telephone terminal equipment	11.40
e. Other terminal equipment	10.35
5. Cable and wire facilities:	
a. Aerial cable—Poles	6.37
b. Aerial cable—Metal	5.90
c. Aerial cable—Fiber	5.10
d. Underground cable—Metal	5.00
e. Underground cable—Fiber	5.00
f. Buried cable—Metal	5.00
g. Buried cable—Fiber	5.00
h. Conduit systems	3.33
i. Other	8.34

Dated: September 22, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06-8323 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

(Docket T-3-2006)

Foreign-Trade Zone 86 – Tacoma, Washington, Application for Temporary/Interim Manufacturing Authority, Norvanco International Inc./Panasonic Consumer Electronics Co., (Kitting of Home Theater Systems), Sumner, Washington

An application has been submitted to the Acting Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Port of Tacoma (Washington), grantee of Foreign-Trade Zone (FTZ) 86, requesting temporary/interim manufacturing (T/IM) authority within FTZ 86, at the facility of Norvanco International Inc. (Norvanco) located in Sumner, Washington. The application was filed on September 26, 2006.

The Norvanco facility (100 employees) is located within Site 8 of FTZ 86 at 1800 140th Avenue East in Sumner, Washington. Under T/IM procedures, the company has requested authority to process (kit) certain imported components into home theater systems (HTS 8527.31; these systems enter the United States duty free) on behalf of the company's client, Panasonic Consumer Electronics Co. Norvanco may source the following potentially dutiable components/inputs from abroad for processing under T/IM authority, as delineated in the company's application: speaker boxes (HTS 8518.22); subwoofers (8518.21); and packing materials (3923.90). Duty rates on these inputs range from 3.0% to 4.9%, *ad valorem*. T/IM authority could be granted for a period of up to two years. Norvanco has also submitted a request for permanent FTZ manufacturing authority (for which Board filing is pending) for the activity described above.

FTZ procedures would allow Norvanco to elect the finished-product duty rate for the imported components/inputs listed above. The application states that the company would also realize logistical/paperwork savings under FTZ procedures. The applicant indicates that the proposed activity is currently conducted abroad and that T/IM FTZ authority could lead to increased U.S. activity and employment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Acting Executive Secretary at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401

Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is November 2, 2006.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above.

Dated: September 27, 2006.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E6-16324 Filed 10-2-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

A-533-809

Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review: Stainless Steel Flanges from India

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

EFFECTIVE DATE: October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994). On February 28, 2006, we received requests for new shipper reviews for the period February 1, 2005, through January 31, 2006, from Kunj Forgings Pvt. Ltd. (Kunj), Micro Forge (India) Ltd. (Micro), Pradeep Metals Ltd. (Pradeep), and Rollwell Forge, Ltd. (Rollwell). On April 6, 2006, the Department published a notice initiating the requested reviews. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 17439, (April 6, 2006). The preliminary results of the new shipper review with respect to Kunj are currently due no later than September 27, 2006.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 as amended (the Act), the Department shall issue preliminary results in a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act further provides, however, that the Department may extend the deadline for completion of the preliminary results of a new shipper review from 180 days to 300 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act. We determine that this new shipper review is extraordinarily complicated because Kunj produces several model types of flanges the Department has not analyzed in previous segments of this administrative proceeding.

Section 751(a)(2)(B) of the Act and section 351.214(i)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 300 days from the date on which the new shipper review was initiated. For the reasons noted above, we are extending the time for the completion of the preliminary results until no later than January 25, 2007, which is 300 days from the date on which the new shipper review was initiated. The deadline for the final results of this new shipper review continues to be 90 days after the publication of the preliminary results, unless extended.

This notice is issued and published in accordance with section 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 27, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration

[FR Doc. E6-16302 Filed 10-2-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 080106C]

RIN 0648-AS84

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 67 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). If approved, Amendment 67 would amend the limitations on use of quota share (QS) and individual fishing quota (IFQ) in the Gulf of Alaska (GOA). Under current regulations, IFQ derived from category B QS must be used on vessels greater than 60 ft (18.29 m) length overall (LOA) in Area 2C and the Southeast Outside District, unless the QS is a block of less than or equal to 5,000 lb (2.27 mt), based on 1996 total allowable catches (TACs). This action would allow all category B QS to be fished on a vessel of any length in all areas, including Area 2C, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws. Comments from the public are welcome.

DATES: Comments on the amendment must be received on or before December 4, 2006.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- E-mail: 0648-AS84-GOA67-NOA@noaa.gov. Include in the subject line the following document identifier: GOA 67 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.

- Fax: 907-586-7557.

Copies of Amendment 67 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the amendment may be obtained from the mailing address specified above or from the Alaska Region NMFS Web site at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7172 or Jay.Ginter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial

approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

The Council recommended Amendment 67 in December 2004. Under the current FMP and regulations, sablefish category B QS IFQ must be used on vessels greater than 60 ft (18.29 m) LOA in Area 2C and the Southeast Outside District, unless the QS is a block of less than or equal to 5,000 lb (2.27 mt), based on 1996 TACs. If approved by NMFS, this amendment would allow all sablefish category B QS to be fished on a vessel of any length in all areas, including Area 2C.

Background

In 1996, NMFS implemented regulations (61 FR 43312, August 22, 1996) that allow under 60 ft (18.29 m) LOA vessels to fish IFQ derived from category B QS. This is known colloquially as the “fish down” provision. However, at that time, the Council recommended excluding Southeast Outside District sablefish and Area 2C halibut fisheries from the fish down provision to ensure market availability of category B QS for vessels over 60 ft (18.29 m) LOA. Area 2C and Southeast Outside District fishermen subject to the restriction recently identified the “fish down” exclusion as unnecessary, inefficient, and burdensome because the market conditions originally perceived to occur that justified the provision never materialized.

Under current regulations, IFQ derived from category B QS must be used on vessels greater than 60 ft (18.29 m) LOA in Area 2C (for halibut) and the Southeast Outside District (for sablefish), unless the QS is a block of less than or equal to 5,000 lb (2.27 mt), based on 1996 TACs. Category B QS represents a small percentage of total halibut QS in Area 2C and a relatively small proportion of total sablefish QS in the Southeast Outside District. Only IFQ derived from category B QS blocks of less than 5,000 lb (2.27 mt), based on the 1996 TACs, is eligible to be fished down on vessels smaller than 60 ft (18.29 m) LOA. Currently, 75 percent of halibut IFQ derived from category B QS and 96 percent of sablefish IFQ derived from category B QS cannot be fished down. Of the halibut IFQ derived from category B QS that must be fished on a vessel greater than 60 ft (18.29 m) LOA, about half is blocked, with block sizes ranging from 6,000 lb (2.72 mt) to 17,000 lb (7.71 mt), based on the 2004

TACs. For sablefish, only 7 percent of the IFQ derived from category B QS that is ineligible to be fished down is blocked. The affected fishing industry and the Council contend that the discrepancy between the use restrictions on category B QS in Southeast Alaska compared to the rest of the State is discriminatory because the intended effect never occurred and assert that all category B QS should be eligible for fish down to achieve equity.

This action proposes to allow QS holders to fish all IFQ derived from category B QS on a vessel of any length in all areas, including Area 2C and the Southeast Outside District. Over time, this action might contribute to a change in the diversity of the IFQ fleet in Southeast Alaska by decreasing the number of large catcher vessels that are typically greater than 60 ft (18.29 m) LOA. A maximum of 1,414 category B, C, and D halibut QS holders operate in Area 2C and a maximum of 440 category B and C sablefish QS holders operate in the Southeast Outside District. A total of 1,996,568 QS units of halibut and 12,891,624 QS units of sablefish would become eligible for the fish down provision under this action.

Public comments are being solicited on proposed Amendment 67 through the end of the comment period stated (see **DATES**). A proposed rule to implement the amendment will be published in the **Federal Register** for public comment concurrently or at a later date. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by close of business on the last day of the comment period.

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

Dated: September 27, 2006.

C. M. Moore,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E6-16291 Filed 10-2-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 092606J]

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) in November 2006. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held on November 1, 2006, from 9 a.m. to 5 p.m. (or until business is concluded), Pacific time.

ADDRESSES: The meeting will be held at NMFS, Southwest Regional Office, 501 West Ocean Boulevard, Suite 3400, Long Beach, CA 90803-4213.

FOR FURTHER INFORMATION CONTACT: Allison Routt at (562) 980-4019 or (562) 980-4030.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee to the U.S. Section to the IATTC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and the representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The Advisory Committee supports the work of the U.S. Section in a solely advisory capacity with respect to U.S. participation in the work of the IATTC, with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. NMFS, Southwest Region, administers the Advisory Committee in cooperation with the Department of State.

Meeting Topics

The General Advisory Committee will meet to receive and discuss information on: (1) introductions of new General Advisory Committee members appointed for 2006-2009, (2) election of a Chair for 2006-2009, (3) 2006 IATTC activities, (4) recent and upcoming meetings of the IATTC and its working groups, including issues such as: conservation and management measures for yellowfin, bigeye, and albacore tuna

for 2006 and beyond, measures to be taken in cases of noncompliance with the IATTC's conservation and management measures, management of fishing capacity, and measures to address bycatch and other issues, (5) IATTC cooperation with other regional fishery management organizations, and (6) administrative matters pertaining to the General Advisory Committee.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Allison Routt at (562) 980-4019 or (562) 980-4030 by October 18, 2006.

Dated: September 28, 2006.

C. M. Moore

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

[FR Doc. E6-16292 Filed 10-2-06; 8:45 am]

BILLING CODE 3510-22-S**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 091906A]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings; correction.

SUMMARY: The agenda for the Mid-Atlantic Fishery Council (Council); its Research Set-Aside (RSA) Committee; its Protected Resources Committee; its Law Enforcement Committee; and, its Executive Committee meetings is updated to reflect the addition of a presentation by the National Marine Fisheries Service on the results of a recently completed peer review of the updated 2006 summer flounder stock assessment.

DATES: The meetings will be held on Tuesday, October 10, 2006 through Thursday, October 12, 2006. See **SUPPLEMENTARY INFORMATION** for a meeting agenda.

ADDRESSES: This meeting will be held at The Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949; telephone: (252) 261-1290.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT:

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674-2331, extension 19.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on September 26, 2006 (FR 71 56109). The agenda is updated as follows:

Wednesday, October 11, 2006

3 p.m. until 4 p.m.—The Council will review and adopt the public hearing document for Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass FMP regarding scup rebuilding.

4 p.m. until 5 p.m.—The Council will receive a presentation from the National Marine Fisheries Service, Office of Science and Technology, on the results of a peer review of the updated 2006 summer flounder stock assessment, completed in September 2006.

All other previously-published information remains the same.

Dated: September 28, 2006.

Tracey L. Thompson,

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

[FR Doc. E6-16263 Filed 10-02-06; 8:45 am]

BILLING CODE 3510-22-S**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 092706B]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 135th meeting to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 135th Council meeting and public hearings will be held on October 16 - 19, 2006. For specific times and the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 135th Council meeting and public hearings will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814-4722; telephone: (808) 955-4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director;
telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION:

In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Monday, October 16, 2006

8 a.m. to 11 a.m. – Precious Corals & Crustaceans, Bottomfish, Ecosystems & Habitat Standing Committees

11 a.m. to 12 noon – Enforcement/VMS Standing Committee

1:30 p.m. to 3:30 p.m. – Pelagics & International Standing Committee

3:30 p.m. to 4:30 p.m. – Fishery Rights of Indigenous People Standing Committee

4:30 p.m. to 6:30 p.m. – Program Planning & Executive/Budget Standing Committee

The agenda during the full Council meeting will include the items listed below.

Schedule and Agenda for Council Meeting

9 a.m. to 5 p.m., Tuesday, October 17, 2006

1. Presentation to Hawaii Archipelago Ecosystem Poster Contest Winners
2. Introductions
3. Approval of Agenda
4. Approval of 133rd and 134th Meeting Minutes
5. Island Reports
 - A. American Samoa
 - B. Guam
 - C. Hawaii
 - D. Commonwealth of the Northern Marianas Islands
6. Agency Reports
 - A. National Marine Fisheries Service
 1. Pacific Islands Regional Office
 2. Pacific Islands Fisheries Science Center
 - B. United States Fish and Wildlife Service (USFWS)
 - C. NOAA General Counsel
 - D. Department of State Guest Speaker
7. Enforcement/Vessel Monitoring Systems(VMS)
 - A. Island Agency Enforcement Reports
 - B. United States Coast Guard Report
 - C. NMFS Office for Law Enforcement Report
 - D. Status of Violations

E. Automatic Identification System Pilot Project Report

F. Northwestern Hawaiian Islands and Hawaii Longline Vessel Monitoring System Issues

G. Main Hawaiian Islands Bottomfish Regulations Enforcement

H. Standing Committee Recommendations

I. Public Comment

J. Council Discussion and Action

8. Hawaii Archipelago

A. Northwestern Hawaiian Islands (NWHI) National Marine Monument (ACTION ITEM)

B. Addition of *Heterocarpus* to the Fishery Management Plan (FMP) (ACTION ITEM)

C. 2006 NWHI Lobster Research Update

D. Black Coral Workshop Report

E. Bottomfish Stock Assessment

F. Status of Bottomfish Stocks Report

G. Fishery Independent Research Workshop

H. Hawaii Bottomfish Research, Monitoring, and Compliance Plan

I. Plan Team Reports

J. Scientific and Statistical Committee (SSC) Recommendations

K. Standing Committee Recommendations

L. Public Hearing

M. Council Discussion and Action

9 a.m. to 5 p.m., Wednesday, October 18, 2006

9. Marianas Archipelago

A. Guam Bottomfish Assessment

B. Guam Offshore Project

C. Standing Committee Recommendations

D. Public Comment

E. Council Discussion and Action

10. American Samoa Archipelago

A. Status of American Samoa Tuna Canneries

B. Fisheries Development in American Samoa

C. Standing Committee Recommendations

D. Public Comment

E. Council Discussion and Action

11. Fishery Rights of Indigenous People

A. Hoohanohano I Na Kupuna Puwala Report

B. Communities Program and Community Demonstration Project Program Update

C. Request for Special Hawaii Longline Permit

D. American Samoa Village-based Marine Protected Areas (MPAs)

E. Guam Community Management Projects

1. Guam Fishermen's Co-Op Longline Vessel Project

2. Guam Voluntary Data Collection Program Project

F. Northern Marianas Islands (NMI) Community Management Projects

1. NMI Community College Project

2. NMI Fishermen's Co-op Project

3. Northern Islands Mayor's Office Project

4. Rota Traditional Fisheries Project

G. Standing Committee Recommendations

H. Public Comment

I. Council Discussion and Action

12. Protected Species

A. Update on Protected Species Issues

B. NMFS, Pacific Islands Regional Office (PIRO) Protected Resources Program

1. Status of American Samoa Re-consultation

2. Status of Federal Responsibility for State of Hawaii's Turtle Management

3. Negligible Impact Determination on Humpback Whales Update

4. Species of Concern Workshop Report

C. NMFS, Pacific Islands Fisheries Science Center (PIFSC) Protected Resources Program

1. Cetacean Survey Update

2. Monk Seal Fatty Acid Study

D. SSC Recommendations

E. Public Comment

F. Council Discussion and Action

13. Pelagic & International Fisheries

A. Swordfish Closure (ACTION ITEM)

B. Shark Management (ACTION ITEM)

C. American Samoa Fishery Aggregation Devices (ACTION ITEM)

D. American Samoa and Hawaii Longline Reports

American Samoa Limited Entry Permit Request

E. Pelagic Stock Assessments

F. Highly Migratory Species Quotas and Data

G. Bigeye Tuna Quota in the Eastern Pacific Ocean

H. PIFSC International Fisheries Capabilities

I. International Fisheries Management

1. Inter-American Tropical Tuna Commission Annual Meeting

2. Western and Central Pacific Fisheries Commission

3. Council South Pacific Albacore Workshop

J. Shark Bycatch in Longline Fisheries

K. SSC Recommendations

L. Standing Committee Recommendations

M. Public Hearing

N. Council Discussion and Action

9 a.m. to 5 p.m., Thursday, October 19, 2006

14. Program Planning

A. Update on Legislation

B. Magnuson Act Reauthorization

C. National System of MPAs Draft Framework

- D. Five-year Program Document
- E. Status of Fishery Management Actions
- F. Education and Outreach Report
- G. Report on State Disaster Relief Program
- H. Standing Committee Recommendations
- I. Public Comment
- J. Council Discussion and Action
- 15. Administrative Matters & Budget
 - A. Financial Reports
 - B. Administrative Reports
 - C. Meetings and Workshops
 - D. Statement of Organization Practices and Procedures (SOPP) Changes
 - E. Council Family Changes Advisory Panel Appointments
 - F. Standing Committee Recommendations
 - G. Public Comment
 - H. Council Discussion and Action
- 16. Other Business
 - A. Election of Officers
 - B. Next Meeting

BACKGROUND INFORMATION:

1. *Swordfish closure (ACTION ITEM)*

In 2006, the Hawaii swordfish fishery reached its 'hard' limit of loggerhead turtle interactions (17) compared to 12 interactions in 2005. Under the Pelagics Fisheries Management Plan (PFMP), there is currently a seven day 'grace' period following the announcement of the fishery closure, during which time vessels must cease fishing for swordfish. However, there was concern that additional turtles may be caught during this grace period and thus exceed the cap of 17 interactions authorized for this fishery under Endangered Species Act Biological Opinion issued by NMFS. Consequently, the swordfish fishery was closed by the NMFS Pacific Islands Region's Regional Administrator following the catch of the 17th loggerhead turtle through and emergency rule. However, an emergency rule may only last for a maximum of one year and the Council recognized that a mechanism was needed under the PFMP to effect an immediate closure should the loggerhead or leatherback cap be reached in a given year. Accordingly, at its 133rd meeting the Council recommended the adoption of a preferred alternative for the Hawaii swordfish longline fishery that would modify existing regulations to close the fishery immediately upon reaching either turtle cap. At the 135th meeting, the Council will review the relevant information and any recommendations from its Scientific and Statistical Committee and may take final action on this issue.

2. *Shark management (ACTION ITEM)*

In 1999, the Council recommended a suite of measures under its Pelagics Fisheries Management Plan (PFMP) to manage shark catches by both pelagic and demersal longline vessels in the Western Pacific Region. These included a fleet wide quota for blues sharks, retained for finning, a trip limit on landings of non-blue sharks and a definition and prohibition of demersal longlining to catch sharks contained in the pelagic management unit. However subsequent events made the majority of measures in the draft amendment (amendment 9) to the PFMP largely redundant. However, the Council has continued to be concerned about non-blue shark catches and the implementation of a trip limit for these species, mainly thresher and mako sharks. Moreover the Council has also deliberated on the impacts of commercial tour operators offering shark viewing tours to the public, and whether these activities fall within Council jurisdiction. Potential options include but are not limited to: (1) Conducting research on shark movement and behavior and population numbers in and around the North Shore of Oahu; (2) Recommending the State of Hawaii establish a moratorium on any new shark tour operations; (3) Establishing federal regulations for shark tour operations such as prohibiting or limiting the amount of chum that may be used, requiring shark tour operations to move further offshore, limiting the number of shark tour operations; and (4) Banning on shark viewing operations in federal waters. At its 135th meeting, the Council may therefore decide to take initial action on a revised trip limit for non-blue sharks for the Hawaii longline fishery, and on whether it should take any action on shark viewing operations in Hawaii.

3. *American Samoa fish aggregating devices (FADs) (ACTION ITEM)*

The Council has heard in the past that despite the implantation of 50 nm area closures to pelagic fishing vessels of \leq 50ft, troll vessels fishing around Tutuila (the main island of American Samoa) wanted additional protection from competition with small-scale alia catamaran longliners. These small-scale outboard powered longline vessels fish in the same coastal waters around Tutuila as the troll fishermen, and fish within the proximity of FADs to improve their catches. Troll fishermen have expressed concerns that troll fishing catch per unit of effort (CPUE) around Tutuila have declined since the advent of the longline fishery. At its

June 2005, meeting the Council requested staff to look at the potential for implementing 5 nm longline exclusion zones around FADs deployed around. Subsequently, at its 133rd meeting in American Samoa, the Council directed staff to draft a range of preliminary alternatives and analyses regarding longline area closures around American Samoa's FADs. Potential options include but are not limited to: (1) implement a 12 nm closure to all longline fishing around Tutuila, (2) 5 nm closures around all FADs deployed around American Samoa, (3) 5 nm closure around the two FADs closest to Pago Pago, and (4) deploy new FAD or FADs specifically for trollers. At its 135th meeting, the Council may therefore decide to take initial action on managing longline fishing around FADs in American Samoa.

4. *Addition of Heterocarpus to the FMP*

A fishery for deepwater shrimp (*Heterocarpus laevigatus* and *Heterocarpus ensifer*) occurs in waters off of Hawaii and other areas of the Pacific. The fishery in Hawaii is sporadic with vessels fishing for a couple of years with a five to seven year hiatus in between. Data is currently captured by the State of Hawaii through its Commercial Marine Landings Catch Reports. The deepwater shrimp, however, are not currently managed under any Fishery Management Plan (FMP). At its 135th Meeting, the Council may consider taking initial action to incorporate deepwater shrimp into their Crustaceans Fishery Management Plan.

5. *NWHI Monument*

On June 15, 2006, President George W. Bush issued Presidential Proclamation No. 8031 establishing the Northwestern Hawaiian Islands Marine National Monument (Monument). The proclamation set apart and reserved the Northwestern Hawaiian Islands for the purpose of protecting the historic objects, landmarks, prehistoric structures and other objects of historic or scientific interest that are situated upon lands owned and controlled by the federal Government of the United States. In establishing the NWHI monument, Proclamation No. 8031 assigns primary management responsibility of marine areas to the Secretary of Commerce, through NOAA in consultation with the Secretary of the Interior. The Proclamation also directed the Secretaries to promulgate regulations to prohibit access to the Monument, restrict fishing in Ecological Reserves and Special Preservation Areas, establish annual catch limits for bottomfish and pelagic species, prohibit

anchoring, and require VMS on all vessels, among other management measures. Regulations implementing these provisions were published in the **Federal Register** on August 29, 2006.

To date, NOAA has not conducted any environmental review to assess the biological or social impacts of the monument designation. However, NWHI fishermen affected by the Monument regulations have expressed concern that while they allow commercial fishing for bottomfish and pelagic species to continue for five years, the prohibition on fishing within Ecological Reserves and Special Preservation Areas, combined with the no-anchoring provision, will make it virtually impossible to catch bottomfish fish within the Monument. Currently, the impacts of these provisions primarily affect fishers in NWHI Hoomalu zone as the two Ecological Reserves, and seven of the nine Special Preservation Areas are located in this zone. However, among the individual Hoomalu Zone fishers, the restrictions affect catches and revenues differently as each fisher have different fishing areas within the zone.

In addition, Monument regulations do not allow for commercial pelagic troll and handline fishermen licensed by the State of Hawaii to continue despite their long history of fishing in the area. However, these fishermen have expressed interest in continuing to fish commercially for pelagic species seaward of the outer boundary of the Monument. These fishermen have also expressed interest in retaining uku (*Aprion virescens*), a bottomfish management unit species which is incidentally caught when trolling for ono (*Acanthocybium solandri*) and other pelagic species around NWHI banks. Currently, federal regulations prohibit harvesting bottomfish management unit species in the NWHI without a permit issued by the PIRO Regional Administrator, making uku a regulatory discard for fishermen who do not have a federal NWHI bottomfish permit.

At its 135th Meeting, the Council may consider taking action to alleviate these "unintended consequences" of the Monument designation by considering options to alter the zoning structure of the NWHI permit areas and address fishing opportunities for Hawaii's troll and handline fishermen seaward of the outer boundary of the Monument, and eliminate regulatory discarding of uku by this fishery.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 28, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E6-16264 Filed 10-2-06; 8:45 am]

BILLING CODE 3510-22-S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 19 October 2006, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: <http://www.cfa.gov>. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 25 September 2006.

Thomas Luebke,

Secretary.

[FR Doc. 06-8453 Filed 10-2-06; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DOD-2006-OS-0198]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office.

ACTION: Notice to Alter a System of Records.

SUMMARY: The National Reconnaissance Office is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy

Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 2, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151-1715.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Linda Hathaway at (703) 227-9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 26, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I, 'Federal Agency Responsibilities for Maintaining Records About Individuals', to OMB Circular No. A-130, dated November 30, 2000.

Dated: September 27, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO-21

SYSTEM NAME:

Personnel Security Files (March 7, 2005, 70 FR 10994)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete "Office of Security, Personnel Security Division" and replace with "Office of Security and Counterintelligence."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

At the end of the entry, add "non-disclosure agreements, job knowledge, contract information, and secure classified information facility (SCIF) information."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301 Departmental Regulations; National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; and E.O. 9397."

PURPOSES:

In the first paragraph after the word "granting," add "and tracking."

Add a new third paragraph to read "To assist in the determination of whether an award fee is justified for the performance of a contract in accordance with an established award fee plan."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the second paragraph, delete "Director of Security" and replace with "Director of Security and Counterintelligence."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name, social security number, agency identification number, date and place of birth, home telephone number, and home address."

SAFEGUARDS:

Delete entry and replace with "Records are stored in a secure, gated facility that is guarded. Computer terminal access is password protected. Access to and use of these records are limited to personnel whose official duties require access on a need-to-know basis."

RETENTION AND DISPOSAL:

Add a new second paragraph to read "Access related files are destroyed 2 years after authorization expires. Non-disclosure agreement files are destroyed when they are 70 years old. Special access program administrative records are destroyed 5 years after the program is disestablished or disapproved, whichever is applicable."

SYSTEM MANAGER(S) AND ADDRESS:

Delete "Chief, Personnel Security Division, Office of Security" and replace with "Director, Office of Security and Counterintelligence."

Delete second paragraph.

* * * * *

CONTESTING RECORD PROCEDURES:

Delete "110-3A" and replace with "110-3b" and delete "110-5A" and replace with "110-3-1."

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Office of Security and Counterintelligence, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military and contractor personnel who have been nominated or investigated for security clearances and program accesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, agency identification number, employee's geographic work location, employer, work telephone number, date and place of birth, home address and home telephone number, dependents' names, individual's background investigation and polygraph data, interview and adjudication information, all other information such as that found on standard government forms SF 86 and 1879, appeal and referral data, program access status, classification number, the security file location, and administrative and investigatory comments, and security incident records, such as security file number, user id, date resolved, case id, case manager, government point of contact, incident report date, incident report type, date notified, reporter's name, affiliation, employer, officer, information systems security officer name and phone number, manager name and phone number, program security officer name and phone number, date of incident, location where incident occurred, incident type and description, names of personnel involved with incident along with their social security number, office, affiliation, employer, and phone number, incident category, classification of data, name of person who classified it, including identification number, title, position, organization, phone number, person who verified classification level of data, their title, position, organization, phone number and source used to verify classification, data owner name, their title, position, organization, phone number, date notified, date classification confirmed, number of individuals and organizations with unauthorized access to information and their clearance level, organization that caused the unauthorized disclosure, nature of unauthorized disclosure, where file originated, how data was introduced into computer system, file name, size, type and whether action warrants notification of the Director of Central Intelligence, non-disclosure agreements, job knowledge, contract information, and secure classified information facility (SCIF) information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations; National Security Act of

1947, as amended, 50 U.S.C. 401 *et seq.*; and E.O. 9397.

PURPOSE(S):

The information is used for granting and tracking security program accesses to NRO personnel; to maintain, support, and track personnel security administrative processing; to provide data for day-to-day security functions; and to conduct security investigations.

The system also provides a centrally managed security incident database for NRO security managers. The user will be the primary reporter of the information to enable an accurate overall view of incident response activities. This will also be a tool to ensure incidents are identified, documented, tracked, investigated, responded to, adjudicated, and corrected, in a standard and timely manner.

To assist in the determination of whether an award fee is justified for the performance of a contract in accordance with an established award fee plan.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To contractors and other Federal agencies for purposes of protecting the security of NRO installations, activities, property, and employees; to facilitate and verify an individual's eligibility to access classified information; and to protect the interests of National Security. The NRO Director of Security and Counterintelligence or his/her designee must approve disclosure in writing.

To the Intelligence Community to review the records, in the form of statistics only, for the purpose of providing trend analysis, disseminating threat information, providing reports of IT threats, any issues affecting mission critical networks, informing them of unauthorized disclosures or any compromise of intelligence information in accordance with applicable law.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, social security number, agency identification number, date and place of birth, home telephone number, and home address.

SAFEGUARDS:

Records are stored in a secure, gated facility, that is guarded. Computer terminal access is password protected. Access to and use of these records are limited to personnel whose official duties require access on a need-to-know basis.

RETENTION AND DISPOSAL:

Security case records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Security incident records are temporary, retained for 5 years after inactivation. Audio and videotapes of polygraph examinations and interviews are temporary and are re-used or destroyed when superseded, obsolete, or no longer needed.

Access related files are destroyed 2 years after authorization expires. Non-disclosure agreement files are destroyed when they are 70 years old. Special access program administrative records are destroyed 5 years after the program is disestablished or disapproved, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security and Counterintelligence, 14675 Lee Road, Chantilly, VA 20151-1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110-3b and NRO Instruction 110-3-1; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or

access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. E6-16287 Filed 10-2-06; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[DOD-2006-OS-0199]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office.

ACTION: Notice to alter a system of records.

SUMMARY: The National Reconnaissance Office is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 2, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151-1715.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Linda Hathaway at (703) 227-9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 13, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I, 'Federal Agency Responsibilities for Maintaining Records About Individuals', to OMB Circular No. A-130, dated November 30, 2000.

Dated: September 27, 2006.

C.R. Choate,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

QNRO-24

SYSTEM NAME:

Administrative Personnel
Management Systems (September 1,
2005, 70 FR 52081).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add at the end of the second
paragraph "employee timecards and
leave records; and military specialty
codes (job identifier)."

Add a new paragraph between the
fourth and fifth paragraphs to read
"Safety related information such as
workplace violence protection issues
and reports."

In the last paragraph, delete "Air
Force specialty code."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5
U.S.C 301, Departmental Regulations;
National Security Act of 1947, as
amended, 50 U.S.C. 401, *et. seq.*; and
E.O. 9397."

PURPOSE(S):

Delete entry and replace with "To
manage, supervise, and administer NRO
personnel support programs relating to
personnel management, official travel,
timecards and leave records, awards,
training, loan of property, security,
emergency recall rosters and contact
information; to support organizational
and personnel reporting requirements;
to support organizational and strategic
planning and workforce modeling; to
support workplace violence protection
programs; to support diversity
initiatives; and to respond to personnel
or related taskings."

* * * * *

RETENTION AND DISPOSAL:

Add a seventh paragraph to read
"Timecard and leave records are
destroyed after six years or GAO audit.
Employee personal safety and violence
protection records are destroyed after 3
years old unless retention is authorized
for official purposes."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete "110-3a" and replace with
"110-3b" and delete "110-5a" and
replace with "110-3-1."

* * * * *

QNRO-24

SYSTEM NAME:

Administrative Personnel
Management Systems (September 1,
2005, 70 FR 52081)

SYSTEM LOCATION:

Organizational elements of the
National Reconnaissance Office, 14675
Lee Road, Chantilly, VA 20151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NRO civilian, military and
contract personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information such as name,
aliases or nicknames, social security
number (SSN), date of birth, place of
birth, home address, home telephone
number, cell phone number, pager,
education, spouse name, emergency
contact information, vehicle and tag
information, gender, nationality,
citizenship, marital status, age, annual
salary, wage type, ethnicity, disability,
personal assignment code;

Work related information such as
work e-mail address, accesses, parent
organization, work telephone number,
employee number, company, company
address, position number and title, rank
and date, agency/organization/office
arrival and departure dates, assignment
history, labor type, pay grade, network
logon, location, career service, employee
status (active/inactive), duty title, last
assignment, badge numbers, personal
classification number, space
professional codes; employee timecards
and leave records; and military specialty
codes (job identifier).

Performance related information such
as awards, performance report due
dates, raters, training history (course
name, date, hours, course provider,
certificate, program call), Contracting
Officers Technical Representative
(COTR) certifications and date,
Individual Development Plan (IDP)
courses.

Travel related information such as
government credit card number and
expiration date, airline/hotel/rental car
information and frequent flyer/club
numbers, airline seating preference,
miles from home to office, miles from
home to airport.

Safety related information such as
workplace violence protection issues
and reports.

Other information such as property
checked out to individual, report
closeout dates; and any other
information deemed necessary to
manage personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301, Departmental
Regulations; National Security Act of
1947, as amended, 50 U.S.C. 401, *et
seq.*; and E.O. 9397.

PURPOSE(S):

To manage, supervise, and administer
NRO personnel support programs
relating to personnel management,
official travel, timecards and leave
records, awards, training, loan of
property, security, emergency recall
rosters and contact information; to
support organizational and personnel
reporting requirements; to support
organizational and strategic planning
and workforce modeling; to support
workplace violence protection
programs; to support diversity
initiatives; and to respond to personnel
or related taskings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures
generally permitted under 5 U.S.C.
552a(b) of the Privacy Act, these records
or information contained therein may
specifically be disclosed outside the
National Reconnaissance Office as a
routine use pursuant to 5 U.S.C.
552a(b)(3) as follows:

The DoD 'Blanket Routines Uses'
published at the beginning of the
National Reconnaissance Office's
compilation of systems of records
notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and Automated
Information Systems.

RETRIEVABILITY:

Information may be retrieved by an
individual's name, Social Security
Number (SSN), employee number, home
or work telephone number, parent
organization, company, and/or position
number.

SAFEGUARDS:

Records are stored in a secure, gated
facility, guard, badge, and password
access protected. Access to and use of
these records are limited to staff whose
official duties require such access.

RETENTION AND DISPOSAL:

Office administrative files, tracking
and control files, and property
inventory records are temporary; they
are kept for 2 years from the date of the
list or date of the report.

Training administrative files are
temporary; they are kept for 3 years.

Supervisory files are temporary; they are kept for 1 year.

Security reports generated from information systems are temporary; they are kept for 5 years. Data files created consisting of summarized information are temporary; they are kept until no longer needed.

Reports created in response to any tasking from Congress, Community Management Staff, DoD and other external agencies are temporary; they are kept until superceded or when no longer needed.

Award related files such as recommendations, decisions, and announcements are temporary; they are kept for 25 years. Electronic documentation used to create the award related files is destroyed 180 days after the record copy has been produced.

Timecard and leave records are destroyed after six years or GAO audit. Employee personal safety and violence protection records are destroyed after 3 years old unless retention is authorized for official purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chiefs of organizational elements of the National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The National Reconnaissance Office rules for accessing records, for contesting contents and appealing initial agency determinations are published in National Reconnaissance Office Directive 110-3b and National Reconnaissance Office Instruction 110-3-1; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

The Honorable Susan M. Collins, *Chairwoman, Committee on Homeland Security, And Governmental Affairs, United States Senate, Washington, DC 20510-6250.*

Dear Madam Chairwoman: In accordance with the Privacy Act of 1974, as amended, (Title 5, United States Code, section 552a(r)), and under guidelines established by paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals", dated February 8, 1996, the Department of Defense is transmitting an alteration to a system of records submitted by the National Reconnaissance Office.

System identifier	Title
QNRO-24	Administrative Personnel Management Systems.

The alteration expands the category of records for which the system is being maintained and the purposes for which the system is used. The alteration requires no change to existing National Reconnaissance Office procedural or exemption rules.

Inquiries or comments concerning this record system should be addressed to the Executive Secretary, Defense Privacy Board, 1901 S. Bell Street, Suite 920, Arlington, VA 22202-4512. Telephone (703) 607-2943.

Sincerely,
Vahan Moushegian, Jr.,
Director.

Attachments:
As stated

Copy to:
Chairman, House Committee on Government Reform Administrator, Office of Information and Regulatory Affairs, OMB
The Honorable Thomas M. Davis III,
Chairman, Committee on Government Reform, House of Representatives, Washington, DC 20515-6143.

Dear Mr. Chairman: In accordance with the Privacy Act of 1974, as amended, (Title 5, United States Code, section 552a(r)), and under guidelines established by paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals", dated February 8, 1996, the Department of Defense is transmitting an alteration to a system of records submitted by the National Reconnaissance Office.

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Inquiries or comments concerning this record system should be addressed to the Executive Secretary, Defense Privacy Board, 1901 S. Bell Street, Suite 920, Arlington, VA 22202-4512. Telephone (703) 607-2943.

Sincerely,
Vahan Moushegian, Jr.,
Director.

Attachments:
As stated

Copy to:
Chairwoman, Senate Committee on Homeland Security and Governmental Affairs Administrator, Office of Information and Regulatory Affairs, OMB
Mr. John D. Graham,
Administrator, Office of Information and Regulatory Affairs, ATTN: Docket Library, NEOB 725, Room 10201, Office

of Management and Budget, 17th Street, Washington, DC 20503.

Dear Mr. Graham: In accordance with the Privacy Act of 1974, as amended, (Title 5, United States Code, section 552a(r)), and under guidelines established by paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals", dated February 8, 1996, the Department of Defense is transmitting an alteration to a system of records submitted by the National Reconnaissance Office.

System identifier	Title
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The alteration expands the category of records for which the system is being maintained and the purposes for which the system is used. The alteration requires no change to existing National Reconnaissance Office procedural or exemption rules.

Inquiries or comments concerning this record system should be addressed to the Executive Secretary, Defense Privacy Board, 1901 S. Bell Street, Suite 920, Arlington, VA 22202-4512. Telephone (703) 607-2943.

Sincerely,
Vahan Moushegian, Jr.,
Director.

Attachments:
As stated

Copy to:
Chairman, House Committee on Government Reform Chairwoman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Thomas M. Davis III,
Chairman, Committee on Government Reform, House of Representatives, Washington, DC 20515-6143.

Dear Mr. Chairman: In accordance with the Privacy Act of 1974, as amended, (Title 5, United States Code, section 552a(r)), and under guidelines established by paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals", dated February 8, 1996, the Department of Defense is transmitting an alteration to a system of records submitted by the National Reconnaissance Office.

System identifier	Title
QNRO-24	Administrative Personnel Management Systems.

The alteration expands the category of records for which the system is being maintained and the purposes for which the system is used. The alteration requires no change to existing National Reconnaissance Office procedural or exemption rules.

Inquiries or comments concerning this record system should be addressed to the Executive Secretary, Defense Privacy Board, 1901 S. Bell Street, Suite 920, Arlington, VA 22202-4512. Telephone (703) 607-2943.

Sincerely,
Vahan Moushegian, Jr.,
Director.
Attachments:
As stated
Copy to:
Chairwoman, Senate Committee on Homeland Security and Governmental Affairs Administrator, Office of Information and Regulatory Affairs, OMB

COORDINATION:
OASD(LA): _____
Date: _____
Vahan Moushegian, Jr.: _____
Date: _____
1901 S. Bell Street, #920
Arlington, VA 22202-4512; telephone (703) 607-294
[FR Doc. E6-16288 Filed 10-2-06; 8:45 am]
BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD-2006-OS-0200]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office.

ACTION: Notice to amend a system of records.

SUMMARY: The National Reconnaissance Office is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 2, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151-1715.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Linda Hathaway at (703) 227-9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the

submission of a new or altered system report.

Dated: September 27, 2006.

C.R. Choate,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO-15

SYSTEM NAME:
Facility Security Files (February 23, 2001, 66 FR 11276).

CHANGES:
* * * * *

SYSTEM LOCATION:
Delete name of office and replace with "Office of Security and Counterintelligence."
* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:
In the first paragraph add "job title" and "access personal identification number" and delete "auto emissions compliance (yes or no)."

In the third paragraph, add "driver's license data."

In the fourth paragraph, add "employee number, passport number, and billet number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; National Security Act of 1947, as amended, 50 U.S.C. 401 et seq.; E.O. 9397; E.O. 12333; and DoD 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that affect United States Persons."

PURPOSES:
Delete "Facility Security Services" and replace with "Facility Security Branch."

In the last clause, change "track" to "assist in."

RETRIEVABILITY:
Delete entry and replace with "name, social security number, organization, home and work address, date and place of birth, badge number, and vehicle license plate number."

SYSTEM MANAGER(S) AND ADDRESS:
Delete name of system manager and replace with "Director, Office of Security and Counterintelligence."

CONTESTING RECORD PROCEDURES:
Delete "110-3A" and replace with "110-3b" and delete "110-5A" and replace with "110-3-1."

RECORD SOURCE CATEGORIES:
Delete entry and replace with "Information is supplied by the

individual and persons other than the individual.”

* * * * *

QNRO-15

SYSTEM NAME:

Facility Security Files.

SYSTEM LOCATION:

Office of Security and Counterintelligence, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have been issued an NRO badge for entry onto the gated compound and into the facility; all other visitors who do not possess an NRO recognized badge but have been granted access to the NRO compound and facility; and any individuals who make unsolicited contact with the NRO.

CATEGORIES OF RECORDS IN THE SYSTEM:

For badged personnel information includes: Name, Social Security Number, grade or rank, job title, employer, organization, office location, work telephone number, vehicle license plate number, date and place of birth, home address and telephone number, point of contact and emergency phone number, badge status, type, number, and issue date, government sponsor, start and expiration dates, approving officer, access and access status, access approval identification, access request date and approval date, access briefing and debriefing dates, access personal identification number, investigation and re-indoctrination dates, polygraph date and status, communication message designator and tracking number;

For visit requests information includes: Name, Social Security Number, organization (affiliation), employer of visitor, cleared or unclassified status, the visit point of contact's name and telephone number, visit date, type of badge to be issued, person issuing badge, date issued, location of visit, visit message, visit group identifier, access or certification access date, and any special accommodation or needs, such as handicap parking or wheelchair access;

For unsolicited contacts information may include: Name, Social Security Number, date and place of birth, home address and telephone number, driver's license data, vehicle license plate number, the correspondence received, and occasionally comments on the contact; information may be limited to that which the person making contact is willing to offer; and

For access control information includes: Name, Social Security Number, employment status, access expiration date, picture of employee, employee number, passport number, billet number, telephone number, vehicle license plate number, date of visit, point of contact, and the times and locations of access to the secure areas of the facility; fields of information for an NRO employee may differ from those for a visitor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; National Security Act of 1947, as amended, 50 U.S.C. 401 et seq.; E.O. 9397; E.O. 12333; and DoD 5240.1-R, Procedures Governing the Activities of DoD Intelligence Components that affect United States Persons.

PURPOSE(S):

The NRO collects and maintains the records (a) To maintain and provide reports for and on personnel and badge information of the current tenants of authorized facilities; also to create and track the status of visit requests and the issuance of visitor badges; (b) To identify employees and visitors at the entrances of the gated facility; tracking inside the NRO facility the NRO employee and visitor badges as they are used to pass through turnstiles and access office suites and other work areas; (c) To track any unsolicited contacts with the NRO, whether by correspondence or personal contact; to provide a threat assessment program for the Facility Security Branch; and to assist in the investigation and determination of any wrongdoing or criminal activities by NRO employees or facility visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information systems, maintained in computers and computer output products.

RETRIEVABILITY:

Name, social security number, organization, home and work address, date and place of birth, badge number, and vehicle license plate number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these files are limited to security staff whose official duties require such access. The automated systems in some cases are partitioned and users of the systems may access only those records for which they have access privileges.

RETENTION AND DISPOSAL:

Records are temporary, retained for 3 months to 5 years depending on the type of record; unsolicited contact records are retained for 25 years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security and Counterintelligence, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature.

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature.'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature.'

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110-3b and NRO Instruction 110-3-1; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual and persons other than the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance

with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. E6-16289 Filed 10-2-06; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for Base Closure and Realignment (BRAC) Actions at Fort Lee, VA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of a DEIS which evaluates the potential environmental impacts associated with realignment actions directed by the Base Closure and Realignment (BRAC) Commission at Fort Lee, Virginia.

DATES: The public comment period for the DEIS will end 45 days after publication of this NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Please send written comments on the DEIS to the following: Fort Lee (proponent): Ms. Carol Anderson, Attention: IMNE-LEE-PWE, 1816 Shop Rd., Fort Lee, Virginia 23801-1604, or via e-mail at CRMLee@lee.army.mil.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Anderson at (804) 734-5071 (Fort Lee), or Ms. Terry Banks at (804) 633-8223 (Fort A.P. Hill) during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The subject of the DEIS and the Proposed Action are the construction and renovation activities at both installations, movement of personnel to Fort Lee, and related field training activities at Fort A.P. Hill associated with the BRAC-directed realignment of Fort Lee.

To implement the BRAC recommendations, Fort Lee will be receiving personnel, equipment, and missions from various closure and realignment actions within DoD. To implement the BRAC Commission recommendations, the Army will provide the necessary facilities, buildings, and infrastructure to support the establishment of a Sustainment Center of Excellence, a Joint Center for Consolidated Transportation Management Training, and a Joint

Center of Excellence for Culinary Training at Fort Lee; locate various offices of the Defense Contract Management Agency (DCMA) Headquarters at Fort Lee; and receive all components of the Defense Commissary Agency (DeCA) at Fort Lee. Additionally, facilities will be installed or constructed at Fort A.P. Hill to accommodate field training exercises and leadership skills training for Student Soldiers at Fort Lee. These actions will impact several areas at the installations.

Following rigorous examination of all implementation alternatives, those alternatives found not to be viable were dropped from further analysis in the Fort Lee and Fort A.P. Hill DEIS. Alternatives carried forward include (1) the Preferred Alternative and (2) a No Action Alternative. The Preferred Alternative includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions at Fort Lee.

The DEIS analyses indicate that implementation of the preferred alternative will have long-term, significant adverse impacts on biological resources, cultural resources, socioeconomic resources (local school districts and community services), and the transportation network at Fort Lee and its surrounding area, and no long-term significant adverse impacts on any resources at Fort A.P. Hill or its surrounding area. Minor adverse impacts on all other resources at both installations would potentially occur from implementation of the preferred alternative.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the alternatives and analyses addressed in the DEIS. The public and government agencies are invited to participate in public meetings where oral and written comments and suggestions will be received. The public meetings will be held on October 25, 2006, from 7 p.m. to 9:30 p.m. at Union Station, 103 River Street, Petersburg, Virginia; and on October 26, 2006 from 7 p.m. to 9:30 p.m. at the Port Royal Town Hall, 419 King Street, Port Royal, Virginia.

An electronic version of the DEIS can be viewed or downloaded from the following URL: http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.

Dated: September 27, 2006.

Addison D. Davis, IV,

*Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational
Health).*

[FR Doc. 06-8440 Filed 10-2-06; 8:45 am]

BILLING CODE 3701-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for Base Realignment and Closure (BRAC) Actions at Fort Sam Houston, TX

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of a DEIS which evaluates the potential environmental impacts associated with realignment actions directed by the BRAC Commission and Army Modular Force (AMF) transformation activities at Fort Sam Houston (FSH), Texas and Camp Bullis, Texas.

DATES: The public comment period for the DEIS will end 45 days after publication of this NOA in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Please send written comments on the DEIS to: Mr. Phil Reidinger, Fort Sam Houston, Public Affairs Office, Building 124, 1212 Stanley Road, Fort Sam Houston, TX 78234, or via e-mail at Phillip.Reidinger@samhouston.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Reidinger at (210) 221-1151 during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The Proposed Action and subject of the DEIS covers the construction and renovation activities, and movement of personnel associated with the BRAC-directed realignment of FSH. The DEIS also covers those AMF transformation activities that would occur at FSH at the same time that the BRAC action is being implemented.

To implement these actions, FSH would be receiving personnel, equipment, and missions from various realignment and closure actions within the DoD. The Army would provide the necessary facilities/buildings and infrastructure to support the changes in force structure. Permanent facilities would be constructed or renovated to house the 470th Military Intelligence (MI) Brigade (BDE) and various

Headquarters (HQ) units of the new Army North (ARNORTH) and Sixth Army, which are currently located in a mix of temporary and existing facilities.

These actions would impact several areas at the installation, as well as specific field training areas on Camp Bullis. The buildup of facilities and personnel would be concentrated in four mission-related subareas at FSH and the training area at Camp Bullis.

Alternatives analyzed in the EIS include: (1) The Preferred Realignment Alternative and (2) a No Action Alternative. The Preferred Realignment Alternative includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions at FSH as mandated by the 2005 BRAC recommendations and AMF actions. Minor alternative siting variations of proposed facilities were also evaluated.

The DEIS analyses indicate that implementation of the preferred alternative would have no long-term, significant impacts on the environmental resources of FSH, Camp Bullis or their surrounding areas. Potential significant impacts to aesthetics and historic district viewscales from implementation of the preferred alternative would be mitigated through strict adherence to procedures identified in the FSH Installation Design Guide, Landscape Design Guide, and Historic Properties Component of the Integrated Cultural Resources Management Plan. No long-term significant impacts to earth (geology, topography, caves, karst features or soils) or wetlands are expected at either installation. Minor land use impacts would be expected at FSH. Use of utilities and generation of hazardous and non-hazardous wastes would likely increase at both installations, but not in significant amounts. Cultural resources would be impacted with the removal or renovation of existing facilities on FSH, some of which are potentially eligible for registration as historic properties. Minor air, noise, and transportation impacts would also occur during short-term construction activities under the preferred alternative at both installations and continue after final construction and occupancy. No significant impacts to biological resources (vegetation, wildlife and threatened and endangered species) are expected from the implementation of the preferred alternative. Alternative siting variations would result in impacts and benefits similar to those of the preferred alternative. The no action alternative provides the baseline conditions for comparison to the preferred alternative.

The Army invites the general public, local governments, other Federal and state agencies to submit written comments or suggestions concerning the alternatives and analyses addressed in the DEIS. The public and government agencies are invited to participate in a public meeting where oral and written comments and suggestions will be received. The public meeting will be held on October 24, 2006 from 7 p.m. to 9 p.m. at St. Patrick's Church, 1801 IH-35 North, San Antonio, Texas.

An electronic version of the DEIS can be viewed or downloaded from the following URL: http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.

Dated: September 27, 2006.

Addison D. Davis, IV,

*Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational
Health).*

[FR Doc. 06-8441 Filed 10-2-06; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel will meet to discuss National Ocean Research Leadership Council and Interagency Committee on Ocean Science and Resource Management Integration activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Monday, October 30, 2006, from 8:30 a.m. to 5:15 p.m. and Tuesday, October 31, 2006, from 8:30 a.m. to 5:45 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting point of contact.

ADDRESSES: The meeting will be held at the Consortium for Oceanographic Research and Education, 1201 New York Ave, NW., Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203-1995, telephone 703-696-4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in

accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research and applications, ocean observations, and other current issues in the ocean science and resource management communities.

Dated: September 25, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6-16303 Filed 10-2-06; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 2, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the

need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Study of Teacher Preparation in Early Reading Instruction.

Frequency: One-time.

Affected Public: Businesses or other for-profit; individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,500.

Burden Hours: 2,500.

Abstract: The Study of Teacher Preparation in Early Reading Instruction will assess the extent to which the content of school of education coursework related to elementary reading is focused on the essential components of reading as well as assess new teachers' preparation to teach the five essential components of reading as identified by the NRP report and specified in the Reading First program statute.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3192. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-16282 Filed 10-2-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 328.

Burden Hours: 11,480.

Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3194. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-16283 Filed 10-2-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 2, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer,

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Pre-Elementary Education Longitudinal Study (PEELS).

Frequency: Varies.

Affected Public: Individuals or household; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,824.

Burden Hours: 4,708.

Abstract: PEELS will provide the first national picture of experiences and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3159. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-16284 Filed 10-2-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 19, 2006—5:30 p.m.—9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001, (270) 441-6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m. Informal Discussion

6 p.m. Call to Order
Introductions

- Review of Agenda
Approval of September Minutes
6:15 p.m. Deputy Designated Federal Officer's Comments
6:35 p.m. Federal Coordinator's Comments
6:40 p.m. Liaisons' Comments
6:50 p.m. Public Comments and Questions
7 p.m. Task Forces/Presentations
- Presentation of a Redevelopment Blueprint, Cecil Field, Navy National Priorities List Site—David Williams
 - Water Disposition/Water Quality Task Force
- 8 p.m. Review of Action Items
8:05 p.m. Public Comments and Questions
8:15 p.m. Break
8:25 p.m. Administrative Issues
- Preparation for November Presentation
 - Budget Review
 - Review of Work Plan
 - Review of Next Agenda
- 8:35 p.m. Subcommittee Report
- Executive Committee—Retreat Preparation
- 8:50 p.m. Final Comments
9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441-6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001 or by calling him at (270) 441-6819.

Issued at Washington, DC on September 28, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6-16296 Filed 10-2-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 28, 2006.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: October 5, 2006, 9:30 a.m.

Place: Room 2C, Commission Meeting Room, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters To Be Considered: Non-Public Investigations and Inquiries, Enforcement Related Matters.

Contact Person For More Information: Magalie R. Salas, Secretary, Telephone (202) 502-8400.

Chairman Kelliher and Commissioners Kelly, Spitzer, Moeller, and Wellinghoff voted to hold a closed meeting on October 5, 2006. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of his staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. E6-16339 Filed 9-29-06; 8:32 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2006-0394; FRL-8226-9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs; EPA ICR No. 1569.06, OMB Control No. 2040-0153 (Renewal)

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 cost.

DATES: Additional comments may be submitted on or before November 2, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OW-2006-0394, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to OW-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket—Mail Code 4101T, 1200 Pennsylvania Ave., 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Don Wayne, Assessment and Watershed Protection Division, Office of Wetlands Oceans and Watersheds, Mail Code

4503T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-1170; fax number: (202) 566-1333; e-mail address: waye.don@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 16, 2006 (71 FR 28319), 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-OW-2006-0394, which is available for online viewing at www.regulations.gov, or in person viewing at the Water 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 the Water Docket is 202-566-2426.

Use EPA's electronic docket and comment system at 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 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 www.regulations.gov.

Title: Approval of State Coastal Nonpoint Pollution Control Programs (Renewal).

ICR numbers: EPA ICR No. 1569.06, OMB Control No. 2040-0153.

ICR Status: This ICR is scheduled to expire on October 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: Under the provisions of national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 29 coastal States and 5 coastal Territories with Federally approved Coastal Zone Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. EPA and NOAA have approved 13 States and 4 Territories, and conditionally approved 16 States and 1 Territory. The conditional approvals will require States and Territories to submit additional information in order to obtain final program approval. CZARA section 6217 requires States and Territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 125 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: 16 States and 1 Territory with approved coastal zone management programs.

Estimated Number of Respondents: 17.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 2,125 hours.

Estimated Total Annual Cost: \$76,500, which includes \$0 annualized Capital Startup costs, \$0 annualized O&M costs, and \$76,500 annualized Labor Costs.

Changes in the Estimates: There is a decrease of 1125 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of EPA and NOAA having fully approved 17 of the 34 State Coastal Nonpoint Programs.

Dated: September 22, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-16297 Filed 10-2-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8225-8]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with The Bionetics Corporation to provide assistance in the enforcement of regulatory requirements under the Clean Air Act, from September 1, 2006, until August 31, 2011. The Bionetics Corporation has been authorized to have access to information submitted to EPA under these statutes that may be claimed and determined to be confidential business information.

DATES: This notice is effective October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Ruske, Environmental Scientist, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564-1033. Fax: (202) 564-1024. Internet mail address: ruske.ross@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has authorized access for The Bionetics Corporation ("Bionetics"), a contractor, to information submitted to the EPA under the Clean Air Act. Some of this information may be claimed and determined to be confidential business information ("CBI"). The EPA contract number is EP-06-088. The Bionetics corporate address is: The Bionetics Corporation, 11833 Canon Boulevard, Suite #100, Newport News, VA 23606.

Under the contract, Bionetics provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance in a number of activities primarily related to the Clean Air Act. The contractor may also be called upon to provide support to other EPA offices under the other statutes. The activities in which Bionetics provides enforcement support include, but are not limited to:

Inspections and audits of facilities that produce, import, store, transport, dispense or analyze fuel used in mobile source vehicles and engines; and Inspections and audits of facilities that manufacture, import, distribute, sell or repair motor vehicles, motor vehicle engines, or non-road engines.

The type of information that may be disclosed includes, but are not limited to: Records related to the production, importation, distribution, sale, storage, testing and transportation of gasoline, gasoline blendstocks, diesel fuel, diesel fuel blendstocks, and detergent additives; and records related to the manufacture, importation, emission certification, emission testing, emission control warranty, repair, modification and fueling of mobile source vehicles and engines, including, but not limited to, motor vehicles, motor vehicle engines, non-road engines, locomotives and marine engines, and stationary source engines.

It is necessary for Bionetics to have access to these records in order to prepare reports that EPA uses to evaluate whether regulated parties are in compliance with applicable regulatory requirements under the above listed statutes.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to Bionetics and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the EPA under the Clean Air Act that EPA may allow access to CBI contained in such submittals to Bionetics and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until August 31, 2011.

As required by 40 CFR 2.301(h)(2), the Bionetics contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors.

Dated: September 27, 2006.

John Fogarty,
Acting Director, Air Enforcement Division.
[FR Doc. E6-16298 Filed 10-2-06; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA-HQ-OECA-2006-0753; FRL-8226-4]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Kmart Holding Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Kmart Holding Corporation ("Kmart" or "Respondent") to resolve violations of the Clean Water Act ("CWA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and proposed final order, and providing an opportunity for interested persons to comment on the CWA, EPCRA, and RCRA portions of this consent agreement, in accordance with CWA section 311(b)(6)(C).

DATES: Comments are due on or before November 2, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-3271; fax: (202) 564-0010; e-mail: cavalier.beth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OECA-2006-0753.

The official public docket consists of the Consent Agreement, proposed Final

Order, and any public comments received. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ECDIC is (202) 566-1752. A reasonable fee may be charged by EPA for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

For public commentors, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. EPA-HQ-OECA-2006-0753. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2006-0753. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OECA-2006-0753.

3. *By Hand Delivery or Courier.* Deliver your comments to the address provided in Section I.A.1., Attention Docket ID No. EPA-HQ-OECA-2006-0753. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI

on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Kmart Holding Corporation, doing business as Kmart Corporation, ("Respondent") is owned by Sears Holding Corporation, a retail company located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and is incorporated in the state of Delaware. Kmart disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), violations of the Clean Water Act ("CWA"), the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") and their implementing regulations.

Specifically, Kmart ("Respondent") disclosed that it failed to prepare and implement an SPCC plan for the following facilities: Canton, MI, Chambersburg, PA, Denver/Brighton, CO, Greensboro, NC, Lawrence, KS, Manteno, IL, Morrisville/Fairless Hills, PA, Newnan, GA, Ocala, FL, Ontario, CA, Shakopee, MN, Sparks, NV, and Warren, OH, and, in addition, failed to install adequate secondary containment at its Denver/Brighton, CO and Morrisville/Fairless, PA facilities in violation of the CWA section 311(j) and 40 CFR part 112. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations.

Respondent further disclosed that it had failed to comply with: (1) CWA section 402(p), 33 U.S.C. 1342(p), and the regulations found at 40 CFR 122.26 when it failed to obtain a stormwater

permit and/or prepare a stormwater pollution prevention plan at the Billerica, MA, Canton, MI, Chambersburg, PA, Denver/Brighton, CO, Groveport, CA, Greensboro, NC, Manteno, IL, Newnan, GA, Ontario, CA, Shakopee, MN, Sparks, NV, Warren, OH, and Forest Park, GA facilities;

(2) CWA section 402(a), 33 U.S.C. 1342(a) and the implementing regulations found at 40 CFR 122.26 when it failed to obtain an NPDES permit at its Denver/Brighton, CO and Lawrence, KS facilities;

(3) CWA section 402(a), 33 U.S.C. 1342(a) and the implementing regulations found at 40 CFR 122.41 and 122.48 when it failed to comply with monitoring requirements and exceeded its permit limits at its Warren, OH facility;

(4) CWA section 402(a), 33 U.S.C. 1342(a) and the implementing regulations found at 40 CFR 403.5 and 403.12 when it failed to analyze effluent discharge and failed to obtain or renew its discharge permit at its Manteno, IL facility; and

(5) CWA section 402(p), 33 U.S.C. 1342(p) and the regulations found at 40 CFR 122.26 and 122.28 when it failed to conduct stormwater monitoring and failed to file a Discharge Monitoring Report at its Greensboro, NC facility. EPA, as authorized by CWA section 309(b), 33 U.S.C. 1319, has assessed a civil penalty for these violations.

Respondent disclosed that it had failed to comply with EPCRA section 302, 42 U.S.C. 11002, and the regulations found at 40 CFR 355.30, when it failed to notify the State Emergency Response Committee ("SERC"), and EPCRA section 303, 42 U.S.C. 11003, and the regulations found at 40 CFR 355.30, when it failed to notify the Local Emergency Planning Committee ("LEPC") of the identity of the emergency coordinator who would participate in the emergency planning process at the following facilities: Billerica, MA, Canton, MI, Chambersburg, PA, Denver/Brighton, CO, Forest Park, GA, Greensboro, NC, Groveport, CA, Lawrence, KS, Manteno, IL, Mira Loma, CA, Morrisville/Fairless Hills, PA, Newnan, GA, Ocala, FL, Ontario, CA, Shakopee, MN, Sparks, NV, and Warren, OH. EPA, as authorized by EPCRA section 325, has assessed a civil penalty for these violations.

In addition, Respondent disclosed that it had failed to comply with EPCRA section 311, 42 U.S.C. 11021 and the regulations found at 40 CFR 370.21, when it failed to submit a Material Safety Data Sheet ("MSDS") for a hazardous chemical(s) or, in the

alternative, a list of such chemicals, at the following facilities: Billerica, MA, Canton, MI, Chambersburg, PA, Denver/Brighton, CA, Forest Park, GA, Greensboro, NC, Groveport, CA, Lawrence, KS, Manteno, IL, Mira Loma, CA, Morrisville/Fairless Hills, PA, Newnan, GA, Ocala, FL, Ontario, CA, Shakopee, MN, Sparks, NV and Warren, OH. Respondent disclosed that it had failed to comply with EPCRA section 312, 42 U.S.C. 11022 and the regulations found at 40 CFR 370.25, when it failed to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and the fire department with jurisdiction over each facility, at the Ontario, CA facility. EPA, as authorized by EPCRA section 325, has assessed a civil penalty for these violations.

Respondent disclosed that it had failed to comply with RCRA section 3001(d), 42 U.S.C. 6921(d) and the implementing regulations found at 40 CFR 261.5 when it failed to comply with requirements for Conditionally Exempt Small Quantity Generators at its Denver/Brighton, CO facility.

Respondent disclosed that it had failed to comply with RCRA section 3002(a), 42 U.S.C. 6922(a), and the implementing regulations listed below relating to large quantity hazardous waste generators, at the Billerica, MA facility:

(1) 40 CFR Part 262 for failure to make hazardous waste identification;

(2) 40 CFR 262.12, for failure to obtain an EPA ID number;

(3) 40 CFR 262.34, for exceeding hazardous waste accumulation times;

(4) 40 CFR 262.30–262.33, for failure to properly package and label wastes;

(5) 40 CFR 262.40, for failure to maintain proper records;

(6) 40 CFR Part 265, Subpart C, for failure to meet preparedness and prevention standards;

(7) 40 CFR 262.34(d) and 265.16 for failure to provide employee training regarding hazardous handling and management practices;

(8) 40 CFR 273.2 and 273.5; for failure to properly manage and dispose of universal wastes;

(9) 40 CFR Part 265, Subpart D, for failure to follow emergency response procedures; Additionally, Respondent disclosed that it had failed to comply with RCRA section 3004(d), 42 U.S.C. 6924(d) and implementing regulations found at 40 CFR 268.1 and 40 CFR 268.7 when it failed to meet land disposal requirements at its Billerica, MA facility.

Respondent disclosed that it had failed to comply with RCRA section 3014(a), 42 U.S.C. 6935(a) and the implementing regulations found at 40

CFR 279.22 when it failed to properly label used oil storage drums at its Canton, MI facility.

Respondent disclosed that it had failed to comply with RCRA section 3002(a), 42 U.S.C. 6922(a) and the implementing regulations listed below at its Greensboro, NC facility:

(1) 40 CFR 265.15, 40 CFR 265.174 and 40 CFR 265.195, for failure to conduct weekly inspections of hazardous waste storage containers;

(2) 40 CFR 262.34(d), for failure to designate an emergency coordinator and failure to post information relating to the emergency coordinator by the phone; and

(3) 40 CFR 262.34(d) and 40 CFR 265.16, for failure to provide hazardous waste handling and management training to employees.

Respondent disclosed that it had failed to comply with RCRA section 3002(a), 42 U.S.C. 6922(a) and the implementing regulations listed below at its Lawrence, KS facility:

(1) 40 CFR 262.34(a) and (c), when it failed to properly label hazardous waste containers and place accumulation start date on the label;

(2) 40 CFR 265.174; 40 CFR 265.15; and 40 CFR 265.195, when it failed to conduct weekly inspections of hazardous waste storage areas and containers; and

(3) 40 CFR 262.34(d), for failure to designate an emergency coordinator and failure to post information relating to the emergency coordinator by the phone.

Respondent disclosed that at its Morrisville/Fairless Hills, PA facility it had failed to comply with:

(1) RCRA section 3014(a), 42 U.S.C. 6935(a) and the implementing regulations found at 40 CFR 279.22, when it failed to properly label oil storage drums;

(2) RCRA section 3002(a), 42 U.S.C. 6922(a) and the implementing regulations found at 40 CFR Part 262, when it failed to comply with all hazardous waste storage and disposal requirements for large quantity generators of hazardous waste;

(3) RCRA section 9003, 42 U.S.C. 6991b and the implementing regulations found at 40 CFR 280.20; 280.34; and 280.40–41, when it failed to maintain information concerning construction, leak detection, or periodic monitoring for emergency generator tank 002A; and

(4) RCRA section 9002, 42 U.S.C. 6991a and the implementing regulations found at 40 CFR 280.22, when it failed to maintain a current underground storage tank (UST) registration certificate.

Respondent disclosed that it had failed to comply with RCRA section 3002(a), 42 U.S.C. 6922(a) and the implementing regulations listed below at its Newnan, GA facility:

(1) 40 CFR 265.15, 40 CFR 265.174 and 40 CFR 265.195 when it failed to conduct weekly inspections of hazardous waste storage areas and containers; and

(2) 40 CFR 262.34(d) for failure to designate an emergency coordinator and failure to post information relating to the emergency coordinator by the phone; and

(3) 40 CFR 262.34(d) and 40 CFR 265.16, for failure to provide hazardous waste handling and management training to employees.

Respondent disclosed that it had failed to comply with RCRA section 3002(a), 42 U.S.C. 6922(a) and the implementing regulations listed below at its Ocala, FL facility:

(1) 40 CFR 265.15, 40 CFR 265.174 and 40 CFR 265.195, when it failed to conduct weekly inspections of hazardous waste storage areas and containers; and

(2) 40 CFR 262.34(d), for failure to designate an emergency coordinator and failure to post information relating to the emergency coordinator by the phone; and

(3) 40 CFR 262.34(d) and 40 CFR 265.16, for failure to provide hazardous waste handling and management training to employees.

Respondent disclosed that it had failed to comply with RCRA section 3014(a), 42 U.S.C. 6935(a) and the implementing regulations found at 40 CFR 279.22, when it failed to properly label oil storage drums at its Warren, OH facility.

Respondent disclosed that it had failed to comply with RCRA section 3014(a), 42 U.S.C. 6935(a) and the implementing regulations found at 40 CFR 279.22, when it failed to properly label used oil containers at its Sparks, NV facility.

EPA, as authorized by RCRA section 3008(g), 42 U.S.C. 6928(g), has assessed a civil penalty for these violations.

EPA determined that Respondent met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty for the EPCRA violations, and for certain CWA and RCRA violations. For those violations meeting the audit policy, EPA waived the gravity based penalty of \$1,608,382 and proposed a settlement penalty amount of \$21,967. This is the amount of the economic benefit gained by Respondent, attributable to its delayed compliance with the CWA, RCRA, and EPCRA regulations. Of this amount,

\$8,260 is attributable to the CWA-SPCC violations; \$7,117 is attributable to the CWA violations; \$6,400 is attributable to the RCRA violations; and \$190 is attributable to the EPCRA violations.

However, Respondent failed to satisfy some of the conditions set forth in the Audit Policy for certain CWA and RCRA violations and was assessed an appropriate and fair civil penalty of \$80,455 (\$78,625 in gravity-based penalties and \$1,830 in economic benefit) to settle those violations.

The total civil penalty assessed for settlement purposes is one hundred and two thousand four hundred and twenty-two dollars (\$102,422). Respondent has agreed to pay this amount. EPA and Respondent negotiated and reached an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on August 18, 2006 (*In Re: Kmart Holding Corp.* Docket Nos. CWA-HQ-2006-6001, RCRA-HQ-2006-6001, EPCRA-HQ-2006-6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$157,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 2, 2006. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this

proceeding prior to the close of the public comment period.

Dated: September 19, 2006.

Robert A. Kaplan,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. E6-16293 Filed 10-2-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8227-1]

Notice of Determination for Dale Hollow Lake To Qualify as a No Discharge Zone

This notice of determination is for all navigable waters of Dale Hollow Lake, located on the border of Kentucky and Tennessee. On March 23, 2006, notice was published that the Army Corps of Engineers (ACOE), State of Kentucky, and State of Tennessee had petitioned the Regional Administrator, Environmental Protection Agency (EPA) to concur with their determinations that adequate and reasonably available pumpout facilities exist on Dale Hollow Lake. Zero comments were received regarding this proposed action.

Therefore, Dale Hollow is designated as No Discharge Zone in accordance with Section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for the waters of Dale Hollow Lake to qualify as a No Discharge Zone. This action is taken under Section 312(f)(3) of the Clean Water Act which states: "After the effective date of the initial standards and regulations promulgated under this Section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which such prohibition would apply."

EPA's action allows prohibition regarding discharge from vessels to be applied by the States of Kentucky and Tennessee for Dale Hollow Lake. EPA found the following existing facilities available for pumping out vessel

holding tanks on Dale Hollow Lake. Their address, telephone number, hours of operation, and draft are as follows:

- (A) Cedar Hill Marina; 2371 Cedar Hill Road, Celina, TN 38551, 931-243-3201, 8 a.m.-4 p.m. 7 days/week, 8' draft
- (B) Dale Hollow Marina; 99 Arlon Webb Dr., Celina, TN 38551, 931-243-2211, 7 a.m.-5 p.m. 7 days/week, floating barge-mobile pumpout
- (C) Holly Creek Marina; 7855 Holly Creek Road, Celina, TN 38551, 931-243-2116, 7 a.m.-8 p.m. 7 days/week, floating barge-mobile pumpout
- (D) Sulpher Creek Marina; 3498 Sulpher Creek Road, Burkesville, KY 42717, 270-433-7272, 24 hours daily (self service), 10' draft
- (E) Hendricks Creek Marina; 945 Hendricks Creek Road, Burkesville, KY 42717, 270-433-7172, 8 a.m.-5 p.m. 7 days/week, 10' draft
- (F) Wisdom Marina; Rt. 2, Box 220, Albany, KY 42602, 606-387-5841, 8 a.m.-5 p.m. 7 days/week, floating barge-mobile pumpout
- (G) Wolf River Marina; Rt. 2, Box 751, Albany, KY 42602, 606-387-5841, 7 a.m.-7 p.m. weekdays, 7 a.m.-9 p.m. weekends, 25' draft
- (H) Eagle's Cove Marina; 5899 Eagle Cove Road, Byrdstown TN, 38549, 931-864-3456, 7 a.m.-8 p.m. 7 days/week, 15' draft
- (I) Star Point Marina; 4490 Star Point Road, Byrdstown TN 38549, 931-864-3115, 6 a.m.-6 p.m. 7 days/week, 15' draft
- (J) Sunset Marina; 2040 Sunset Dock Road, Hwy 111, Byrdstown, TN 38549, 931-864-3146, 6 a.m.-p.m. 7 days/week, 40' draft
- (K) East Port Marina; 5652 East Port Road, Alpine, TN 38543, 931-879-7511, 7 a.m.-8 p.m. 7 days/week, 11' draft
- (L) Willow Grove Marina; 9990 Willow Grove Hwy., Allons, TN 38541, 931-823-6616, 7 a.m.-8 p.m. 7 days/week, 15' draft and mobile barge
- (M) Livingston Marina; 1260 Livingston Boat Dock Road, Allons, TN 38541, 931-823-6666, 8 a.m.-5 p.m. 7 days/week, floating barge-mobile pumpout
- (N) Horse Creek Marina; 1150 Horse Creek Road, Celina, TN 38551, 931-243-2125, 24 hours daily, seven days weekly (self service), 10' draft
- (O) Dale Hollow Lake State Resort Park; 6371 State Park Road, Burkesville, KY 42717, 270-433-7431, 8 a.m.-6 p.m. weekdays, 8 a.m.-8 p.m. weekends, 24' draft

All vessel pumpout facilities that are described either discharge into State approved and regulated septic tanks or

State approved on-site waste treatment plants, or the waste is collected into a large holding tank for transport to a sewage treatment plant. Thus, all vessel sewage will be treated to meet existing standards for secondary treatment.

Estimates based on a survey conducted of Dale Hollow Lake marina managers and owners in regard to the number of boats equipped with U.S. Coast Guard-approved Marine Sanitation Devices (MSD) result in 68 boats. This would result in a ratio of 4.5 boats with MSDs per pumpout facility. Dale Hollow Lake's shoreline management plan does not permit private docks. Altogether, there are a total of 2,663 boat slips located at the 15 Dale Hollow Lake marinas. Of that overall total, 453 are houseboat slips, and 385 of these are houseboats which have holding tanks (subtracting the 68 boats mentioned above, which have MSDs). This results in a ratio of 26 boats with holding tanks per pumpout facility.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E6-16290 Filed 10-2-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 26, 2006. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 24, by completing the form found on-line at: <https://www.federalreserve.gov/secure/forms/cacregistration.cfm>

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. EDT and is expected to conclude at 12:30 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters. Time permitting, the Council will discuss the following topics:

- Fair and Accurate Credit Transactions Act (FACT Act)
- Nontraditional Mortgage Products
- Affordable Housing

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Kyan Bishop, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bishop, 202-452-6470.

Board of Governors of the Federal Reserve System, September 28, 2006.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. E6-16266 Filed 10-2-06; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

SES Performance Review Board

AGENCY: General Services Administration

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the GSA Performance Review Board.

FOR FURTHER INFORMATION CONTACT:

Karla J. Hester, Director of Executive Resources, Office of the Chief Human Capital Officer, General Services Administration, 1800 F Street, N.W., Washington, DC 20405, (202) 501-1207.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review board(s). The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the General Services Administration:

John F. Phelps, Chief of Staff -- Chair
David L. Bibb, Deputy Administrator
James A. Williams, Federal Acquisition Service Commissioner
Jon A. Jordan, Federal Acquisition Service Controller
David L. Winstead, Public Buildings Service Commissioner

Anthony E. Costa, Public Buildings
Service Deputy Commissioner
Gail T. Lovelace, Chief Human Capital
Officer
Alan R. Swendiman, General Counsel
Kathleen M. Turco, Chief Financial
Officer
Barbara L. Shelton, Regional
Administrator, Mid-Atlantic Region
Peter G. Stamison, Regional
Administrator, Pacific Rim Region

Dated: September 15, 2006.

Lurita Doan

Administrator

[FR Doc. E6-16254 Filed 10-2-06; 8:45 am]

BILLING CODE 6820-34-S

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**Office of the National Coordinator for
Health Information Technology;
American Health Information
Community Quality Workgroup**

ACTION: Change of Meeting Date and
Time.

SUMMARY: This notice announces the
second meeting of the American Health
Information Community Quality
Workgroup in accordance with the
Federal Advisory Committee Act (Pub.
L. 92-463, 5 U.S.C., App.).

DATES: October 11, 2006 from 2 p.m. to
5 p.m.

ADDRESSES: Mary C. Switzer Building
(330 C Street, SW., Washington, DC
20201), Conference Room 4090 (you
will need a photo ID to enter a Federal
building).

FOR FURTHER INFORMATION CONTACT:
[http://www.hhs.gov/helathit/ahic/
workgroups.html](http://www.hhs.gov/helathit/ahic/workgroups.html).

SUPPLEMENTARY INFORMATION: During the
meeting, the Workgroup will continue
their discussion on a core set of quality
measures and an environmental scan.

The meeting will be available via
internet access. For additional
information on the meeting, go to
[http://www.hhs.gov/healthit/ahic/
quality_instruct.html](http://www.hhs.gov/healthit/ahic/quality_instruct.html).

Judith Sparrow,

*Director, American Health Information
Community, Office of Programs and
Coordination, Office of the National
Coordinator for Health Information
Technology.*

[FR Doc. 06-8438 Filed 10-2-05; 8:45 am]

BILLING CODE 4150-24-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**Office of the National Coordinator for
Health Information Technology;
American Health Information
Community Chronic Care Workgroup
Meeting**

ACTION: Announcement of meeting.

SUMMARY: This notice announces the
tenth meeting of the American Health
Information Community Chronic Care
Workgroup in accordance with the
Federal Advisory Committee Act (Pub.
L. 92-463, 5 U.S.C., App.).

DATES: October 16, 2006 from 1 p.m. to
5 p.m.

ADDRESSES: Mary C. Switzer Building
(330 C Street, SW., Washington, DC
20201), Conference Room 4090 (please
bring photo ID for entry to a Federal
building).

FOR FURTHER INFORMATION CONTACT:
[http://www.hhs.gov/healthit/ahic/
cc_main.html](http://www.hhs.gov/healthit/ahic/cc_main.html).

SUPPLEMENTARY INFORMATION: The
Workgroup will discuss up-coming key
recommendations to the AHIC, and will
continue discussion on developing a
vision statement.

The meeting will be available via Web
cast at [http://www.hhs.gov/healthit/
ahic/cc_instruct.html](http://www.hhs.gov/healthit/ahic/cc_instruct.html).

Judith Sparrow,

*Director, American Health Information
Community, Office of Programs and
Coordination, Office of the National
Coordinator for Health Information
Technology.*

[FR Doc. 06-8439 Filed 10-2-06; 8:45 am]

BILLING CODE 4150-24-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Office of the Secretary

**Notice of Meeting: Secretary's
Advisory Committee on Genetics,
Health, and Society**

Pursuant to Public Law 92-463,
notice is hereby given of the eleventh
meeting of the Secretary's Advisory
Committee on Genetics, Health, and
Society (SACGHS), U.S. Public Health
Service. The meeting will be held from
8:30 a.m. to approximately 5 p.m. on
Monday, November 13, 2006 and 8:30
a.m. to approximately 5 p.m. on
Tuesday, November 14, 2006, at the
Marriott Inn and Conference Center,

University of Maryland—College Park,
3501 University Boulevard East,
Adelphi, MD 20783. The meeting will
be open to the public with attendance
limited to space available. The meeting
also will be Web cast.

The agenda topics include:
Consideration of public comments on
and finalization of the Committee's draft
report, Policy Issues Associated With
Undertaking a Large U.S. Population
Cohort Project on Genes, Environment
and Disease; a review of the
Committee's draft report on
pharmacogenomics; a session related to
the impact of gene patents and licensing
practices on patient access to genetic
and genomic technologies; and updates
on developments at FDA and CMS
regarding the oversight of genetic tests
and services and on other Federal
activities relevant to the work and
charter of SACGHS.

Time will be provided each day for
public comments. The Committee
would welcome hearing from anyone
wishing to provide public comment on
any issue related to genetics, health and
society. Individuals who would like to
provide public comment should notify
the SACGHS Executive Secretary, Ms.
Sarah Carr, by telephone at 301-496-
9838 or e-mail at sc112c@nih.gov. The
SACGHS office is located at 6705
Rockledge Drive, Suite 750, Bethesda,
MD 20892. Anyone planning to attend
the meeting, who is in need of special
assistance, such as sign language
interpretation or other reasonable
accommodations, is also asked to
contact the Executive Secretary.

Under authority of 42 U.S.C. 217a,
Section 222 of the Public Health Service
Act, as amended, the Department of
Health and Human Services established
SACGHS to serve as a public forum for
deliberations on the broad range of
human health and societal issues raised
by the development and use of genetic
and genomic technologies and, as
warranted, to provide advice on these
issues. The draft meeting agenda and
other information about SACGHS,
including information about access to
the Web cast, will be available at the
following Web site: [http://
www4.od.nih.gov/oba/sacghs.htm](http://www4.od.nih.gov/oba/sacghs.htm).

Dated: September 26, 2006.

Anna Snouffer,

*Acting Director, NIH Office of Federal
Advisory Committee Policy.*

[FR Doc. 06-8442 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part J (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 71 FR 44297, dated August 4, 2006) is amended to reflect the reorganization of the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry.

Section J–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statements for the *Division of Health Assessment and Consultation (JAAC)*, *Office of the Director (JAA)*, *Office of the Administrator (JA)*, and insert the following:

Division of Health Assessment and Consultation (JAAC). (1) Conducts public health assessments, health consultations, and other related public health activities, to determine the health implications of releases or threatened releases of toxic substances into the environment; in particular, such activities are conducted for Superfund, Resource Conservation and Recovery Act (RCRA), petition requests, and other sites or instances where communities have been or may have been exposed to toxic substances in the environment; (2) conducts and evaluates exposure pathways analyses and other exposure screening analyses to identify impacted communities, to include exposure investigations (biologic sampling, personal monitoring, etc.), exposure-dose reconstruction, and related environmental assessments, as appropriate; (3) identifies appropriate interventions for impacted communities to prevent exposures and/or adverse health effects; (4) issues public health advisories when a release or threatened release of a toxic substance poses an imminent health hazard; (5) plans, prepares, and executes appropriate health communications and health educational strategies/activities/programs for communities affected or potentially affected by toxic substances released into the environment; (6) manages the ATSDR-mandated program for conducting site-specific activities at petitioned sites; (7) manages and

implements ATSDR's Site-Specific Cooperative Agreement Program and the ATSDR tribal programs for external partners; (8) coordinates the agency's environmental public health training program; and (9) provides technical support and resources for National public health emergencies and disaster response as appropriate.

Office of the Director (JAAC1). (1) Provides overall leadership in directing, coordinating, evaluating, and managing all programmatic and administrative operations of the Division of Health Assessment and Consultation (DHAC); (2) develops programmatic goals and objectives and provides leadership, policy formation, and guidance in program planning and development; (3) provides program management, administrative, logistical support services for the division; (4) coordinates division activities with other components of ATSDR and other federal, state and local agencies and tribal governments; (5) initiates specific research and medical activities as appropriate to further DHAC's mission and program needs; (6) provides overall leadership and management of DHAC resources for disaster response activities to public health emergencies; and (7) assesses the need and develops training for public health professionals conducting site-specific activities, and coordinates the delivery of these courses for the training of federal staff, tribal members, and state partners.

Health Promotion and Community Involvement Branch (JAACB). (1) Plans, coordinates, implements, and evaluates ATSDR's health promotion and community involvement site-specific programs; (2) communicates the agency's roles, responsibilities, and public health information to public and professional audiences to mitigate health effects from potential and actual exposures to toxic substances; (3) monitors the progress of work plan activities, and reviews and evaluates the accuracy and clarity of community outreach and health education materials; (4) uses best practices and evidence-based approaches from community involvement and public health promotion; (5) develops and delivers environmental public health information for public and professional audiences including translating scientific documents into plain language; (6) advocates for the public health needs of communities affected by environmental hazards; links members of the public in communities affected by hazardous waste with technical and scientific staff and resources, where appropriate; (7) develops, manages, and evaluates the health education and

promotion component of ATSDR's state-based cooperative agreement program with external partners to ensure that the technical and administrative requirements of the program are met; (8) provides technical assistance and leadership on community involvement and environmental health promotion to ATSDR and ATSDR partners; (9) advocates for advances in environmental public health promotion to address community concerns and support community needs; and, (10) collaborates with other ATSDR program areas and partners to ensure cultural awareness and respect are observed and practiced in all activities that involve communities, tribes, tribal governments and tribal organizations.

Exposure Investigations and Site Assessment Branch (JAACC). (1) Manages a wide range of public health assessment requests, including private-sector petitions and regional-lead activities, that are assigned based on branch staff expertise; (2) monitors the progress of work plan activities, and reviews and evaluates the scientific accuracy and clarity of public health assessments, health consultations, and related materials; (3) serves as the lead branch for planning, directing, coordinating, evaluating, conducting, and managing DHAC's operations and activities for exposure investigations, exposure-dose reconstruction, and modeling; (4) serves as the lead branch for processing intake of regional requests for DHAC assistance; (5) coordinates within and across branch and divisional units to provide technical expertise for a wide-range of activities that support the division and agency's public health mandates and priorities; (6) issues public health assessments, health consultations, public health advisories, and provides technical assistance; and, (7) develops programmatic goals and objectives, and contributes to policy formation and guidance in program planning and development.

Site and Radiological Assessment Branch (JAACD). (1) Manages a wide range of public health assessment requests, including private-sector petitions and regional-lead activities, that are assigned based on branch staff expertise; (2) monitors the progress of work plan activities, and reviews and evaluates the scientific accuracy and clarity of public health assessments, health consultations, and related materials; (3) serves as the lead branch for planning, directing, coordinating, evaluating, conducting, and managing DHAC's operations and activities at national priorities list sites, federal sites, and RCRA sites; (4) provides radiation

physics expertise for all division public health assessment activities, and serves as the division's liaison to radiation disaster response teams; (5) coordinates within and across branch and divisional units to provide technical expertise for a wide-range of activities that support the division and agency's public health mandates and priorities; (6) issues public health assessments, health consultations, public health advisories, and provides technical assistance; and (7) develops programmatic goals and objectives, and contributes to policy formation and guidance in program planning and development.

Cooperative Agreement and Program Evaluation Branch (JAACE). (1) Plans, directs, coordinates, and manages ATSDR's Site-Specific Cooperative Agreement Program; (2) collaborates with other program areas within ATSDR to develop annual plans of work with each of the cooperative agreement partners; (3) monitors the progress of work plan activities and reviews and evaluates the scientific accuracy and clarity of public health assessments, health consultations, and community outreach and health education materials; (4) evaluates the integration of health assessment, health education, health study, and community involvement activities, the performance of cooperative agreement partners, and the public health impact of partner conducted activities; (5) advises cooperative agreement partners on scientific and procedural developments in the area of environmental public health; (6) directs and coordinates the DHAC's site-specific evaluation activities to identify the short-term and long-term benefit of site-specific public health assessment, community health education, and community involvement activities; (7) develops and refines performance measures for reporting DHAC's products and intervention activities for Congressional Justification Reports and to meet OMB Performance Assessment and Rating Tool reporting requirements; (8) directs and coordinates the extraction of information from the division's products and entry of this information into ATSDR's HAZDAT; (9) conducts database queries to analyze and identify trends in site-related public health issues; and (10) develops programmatic goals and objectives and contributes to policy formation and guidance in program planning and development.

The Chief Operating Officer, CDC, has been delegated the authority to sign general Federal Register notices for both the CDC and ATSDR.

Dated: September 25, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06-8416 Filed 10-2-06; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06-05BP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Healthier Worksite Initiative—CDC Employee Needs Assessment—New—Division of Nutrition and Physical Activity (DNPA), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In October 2002, in line with HHS initiatives, the CDC Director began a Healthier Worksite Initiative (HWI) for CDC, focusing on the four pillars of the

President's Healthier U.S. Workforce directive: Physical activity, healthy eating, preventive screening, and making healthy choices. The Division of Nutrition and Physical Activity (DNPA) was designated to lead the initiative within CDC. Two entities were established to support the planning and evaluation of the Healthier Worksite Initiative, the Healthier Worksite Advisory Committee and the Healthier Worksite Workgroup. The Advisory Committee includes representatives from all interested Centers, Institutes, and Offices within CDC. The committee meets monthly to review progress and provide direction for the Healthier Worksite Initiative. The Healthier Worksite Workgroup develops innovative worksite health program ideas and tests them in demonstration projects.

The purpose of the Healthier Worksite Initiative at CDC is to: (1) Develop and evaluate worksite health promotion interventions for CDC employees, culminating in a model worksite health promotion program; (2) establish an evidence base for worksite health promotion interventions; and (3) develop a web-based tool kit to share information learned with other Federal agencies, as they refine or develop their own employee health promotion programs.

This request for OMB approval is to conduct a web-based CDC employee needs assessment that includes a baseline measurement of employee health practices. The employee needs assessment will be offered to permanent employees, contractors, fellows, and guest researchers, and will provide a foundation of information to determine the direction and requirements for building a successful worksite health promotion program. An additional outcome of the HWI project will be a Web site which will serve as a resource for government agencies and the general public for implementation of Healthier U.S. pillars in work settings.

Tracking and evaluation of program effectiveness are standard health promotion tools. Monitoring methods that may be used in the future to assess and improve the effectiveness of the HWI program include: e-mail surveys, telephone surveys, telephone or in-person focus groups, web-based surveys, or intercept interviews, which aim at intercepting employees in their natural environment and deliver a short structured questionnaire on their habits, preferences, perceptions or behavior. There is no cost to the respondents other than their time to participate in the survey.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses/re-spondent	Average burden per response (in hours)	Total burden hours
CDC Employee's Screened	16,980	1	1/60	283
CDC Employee Respondents	8,490	1	9/60	1274
Total .....	.....	.....	.....	1557

Dated: September 26, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-16306 Filed 10-2-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Supplemental Grant Award to Bucks County Health Improvement Project, Inc. for a Project Entitled, "Increasing Access to Health Care for Bucks County Residents"

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Supplemental Grant Award.

Funding Amount: \$500,000. There will be an additional supplement of \$500,000 to this grant in FY 2007.

SUMMARY: The Centers for Medicare & Medicaid Services has awarded a supplemental grant entitled "Increasing Access to Health Care for Bucks County Residents" to the Bucks County Health Improvement Project, Inc., 1201 Langhorne-Newton Road, Langhorne, PA 19047. The project period is September 10, 2002 through September 9, 2008. The Bucks County Health Improvement Project (BCHIP) proposes to provide 3 ongoing major programs, which were initiated under the parent grant. These include continuation and expansion of: The adult health clinic which has served over 3,274 patients having 9,200 visits; the dental program for needy children and adults; and the Cardiovascular Risk Reduction program. Through these programs, BCHIP provides health and dental services for vulnerable populations, including under-insured and recent immigrants.

These BCHIP health services for the indigent and uninsured have helped meet fundamental physical, dental, and mental health needs for residents, including immigrant groups, who are otherwise without resources for needed

care. There is concern that without additional supplemental funding, provision of these vital health care services in Bucks County would be at risk. An additional 2 years of funding will permit BCHIP to follow-on with several of their major, demonstrated successful programs delivering community care and outreach to targeted groups with serious unmet needs.

Furthermore, the BCHIP consortium of public and private hospitals and outpatient health and dental providers has collaborated over the past 15 years to develop an impressively efficient administrative framework for the donation, provision and coverage of a wide array of health services for the medically indigent. Additional funding will further foster the improvement and expansion of their model for administering health care through multiple programs to the needy. Over the past 2 years, BCHIP leaders have been sharing their administrative model and experience with other health U.S. organizations and communities, including a "Communities Joined in Action" conference in New Orleans and quarterly Pennsylvania State Health Improvement Plan (SHIP) meetings. They plan to continue to offer guidance to providers and health organizations gleaned from their expanding, ongoing service programs under requested supplemental funding.

This award is made based on the authority granted by section 1110 of the Social Security Act, which authorizes appropriations each fiscal year for grants to pay for part of the cost of research or demonstration projects that will improve the administration and effectiveness of programs.

FOR FURTHER INFORMATION CONTACT: Renee Mentnech, Director, Research and Evaluation Group, Office of Research, Development, and Information, Centers for Medicare & Medicaid Services, Mail Stop C3-21-28, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786-6692, or Judith L. Norris, Grants Officer, Office of Acquisitions and Grants Management, Centers for Medicare & Medicaid Services, Mail

Stop C2-21-15, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786-5130.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.779 (CMS) Research, Demonstrations and Evaluations) Section 1110 of the Social Security Act.

Dated: September 19, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 06-8420 Filed 9-29-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2243-N]

RIN 0938-AO75

Medicaid Program; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Consistent with the provisions of section 1923 of the Social Security Act, as amended by section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and section 6054 of the Deficit Reduction Act of 2005, this notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal fiscal year (FFY) 2005, the preliminary Federal share DSH allotments for FFY 2006, and the preliminary Federal share DSH allotments for FFY 2007. This notice also announces the final FFY 2005, the preliminary FFY 2006, and the preliminary FFY 2007 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. In addition, this notice includes background information describing the

methodology for determining the amounts of States' FFY DSH allotments.

FOR FURTHER INFORMATION CONTACT:
Richard Strauss, (410) 786-2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Disproportionate Share Hospital Allotments for Federal Fiscal Year 2003

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal fiscal year (FFY) 2003 disproportionate share hospital (DSH) allotments are calculated by increasing the amounts of the FFY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)," contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a fiscal year cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous fiscal year or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Because the actual FFY 2002 DSH allotments were determined in accordance with section 1923(f)(4) of the Act rather than the amount specified in the chart in section 1923(f)(2) of the Act, for most States the calculation of States' FFY 2003 allotments was not based on the States' actual FFY 2002 DSH allotments. The exception to this is the calculation of the FFY 2003 DSH allotments for certain "Low-DSH States" (defined in section 1923(f)(5) of the Act). Under the Low-DSH State provision, there is a special calculation methodology for the Low-DSH States only. Under this methodology, the FFY 2003 allotments were determined by using (that is, increasing) such States' actual FFY 2002 DSH allotments (not their FFY 2002 allotments specified in the chart in section 1923(f)(2) of the Act) by the percentage change in the CPI-U for the previous fiscal year.

B. DSH Allotments for FFY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FFY 2004 DSH allotments were determined by increasing their FFY 2003 allotments by 16 percent, and the fiscal year DSH

allotment amounts so determined were not subject to the 12 percent limit.

C. DSH Allotments for Non-Low DSH States for FFY 2005, and Fiscal Years Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by section 1001(a)(2) of the MMA, the non-Low-DSH States' DSH allotments for FFY 2005 and subsequent fiscal years continue at the same level as the States' DSH allotments for FFY 2004 until a "fiscal year specified" occurs. The "fiscal year specified" is the first fiscal year for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this process, a DSH allotment is determined for FFYs after 2003 by increasing the State's DSH allotment for the previous fiscal year by the percentage change in the CPI-U for the prior fiscal year, subject to the 12 percent limit. The fiscal year specified will be the fiscal year when the DSH allotment calculated under this special parallel process finally equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's fiscal year DSH allotment will be calculated by increasing the State's previous actual fiscal year DSH allotment (which would be equal to the FY 2004 DSH allotment) by the percentage change in the CPI-U for the previous fiscal year, subject to the 12 percent limit. The following example illustrates how the fiscal year DSH allotment would be calculated for fiscal years after FFY 2004.

Example. A State's FFY 2003 DSH allotment is \$100 million. Under the MMA, the State's FFY 2004 DSH allotment would be \$116 million (\$100 million increased by 16 percent). The State's DSH allotment for FFY 2005 and subsequent fiscal years would continue at the \$116 million FFY 2004 DSH allotment for fiscal years following FFY 2004 until the "fiscal year specified" occurs. In the separate parallel process, we determine whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we determine the State's DSH allotment each fiscal year by increasing the State's DSH allotment for the previous fiscal year (as also determined under the special parallel process) by the percentage change in the CPI-U for the previous fiscal year, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special

process, the State's FFY 2007 DSH allotment was determined to be \$115 million and the percentage change in the CPI-U for FFY 2007 (the previous fiscal year) relevant for the calculation of the FFY 2008 DSH allotment was 2 percent. That is, the percentage change for the CPI-U for FFY 2007, the year before FFY 2008, was 2 percent. Therefore, the State's special parallel process FFY 2008 DSH allotment amount would be calculated by increasing the special parallel process FFY 2007 DSH allotment amount of \$115 million by 2 percent; this results in a special DSH allotment process amount for FFY 2008 of \$117.3 million. Since \$117.3 million is greater than \$116 million (the FFY 2004 DSH allotment calculated under the MMA), we would determine that FFY 2008 is the "fiscal year specified" (the first year that the FFY 2004 allotment equals or no longer exceeds the parallel process allotment). We would then determine the State's FFY 2008 allotment as the State's actual FFY 2007 DSH allotment (\$116 million) increased by the percentage change in the CPI-U for FFY 2007 (2 percent). Therefore, the State's FFY 2008 DSH allotment would be \$118.32 million (\$116 million increased by 2 percent); for purposes of this example, the application of the 12 percent limit has no effect. For FFY 2009 and thereafter, the State's DSH allotment would be calculated by increasing the State's previous fiscal year's DSH allotment by the percentage change in the CPI-U for the previous fiscal year, subject to the 12 percent limit.

However, as amended by section 1001(b)(4) of the MMA, section 1923(f)(5)(B) of the Act also contains new criteria for determining whether a State is a Low-DSH State, beginning with FFY 2004. This provision is described in section I.D.

Finally, this notice implements the provisions of section 6054 of the Deficit Reduction Act (DRA) of 2006 Public Law 109-171, enacted February 8, 2006) with respect to the determination of the DSH allotment for the District of Columbia. Under section 6054 of the DRA, for purposes of determining only the FFY 2006 and subsequent fiscal year DSH allotments for the District of Columbia, the table in section 1923(f)(2) of the Act is amended by increasing the FFY DSH allotment amounts indicated in that table for the District of Columbia for FFYs 2000, 2001, and 2002 to \$49 million for each of those fiscal years. Before the DRA amendment, the amount in the chart in section 1923(f)(2) of the Act for the District of Columbia for each of those fiscal years was \$32 million. This DRA provision increases the fiscal year DSH allotment for the District of Columbia effective with the FFY 2006 DSH allotment. This change is because the DSH allotments for FFY 2003 are based on the amounts of States' DSH allotments for FFY 2002 as contained in the chart in section 1923(f)(2) of the Act. Since (for purposes of ultimately

determining the FFY 2006 allotment) the DRA provision increases the FFY 2002 allotment for the District of Columbia, as indicated above, the FFY 2003 allotment was increased. Furthermore, for this purpose, the FFY 2004 allotment for the District of Columbia would then be determined by increasing the FFY 2003 allotment (as so determined) by 16 percent. For fiscal years subsequent to FFY 2006, the DSH allotments are determined as described above. The preliminary FFY 2006 DSH allotment for the District of Columbia contained in this notice reflects the provision of section 6054 of the DRA.

As described below, in accordance with section 6054 of the DRA, the FFY 2006 DSH allotment for the District of Columbia is \$57,692,600. As amended by section 6054 of the DRA, the FFY 2002 DSH allotment amount for the District of Columbia contained in the chart in section 1923(f)(2) of the Act was increased to \$49,000,000. In accordance with section 1923(f)(3)(A) of the Act, the FFY 2003 DSH allotment is determined by increasing the \$49,000,000 DSH Allotment for FFY 2002 (as referenced in section 1923(f)(2) of the Act) by the percentage change in the CPI-U for 2002 (in this case, 1.5 percent) to \$49,735,000. In accordance with section 1923(f)(3)(C)(i) of the Act, the FFY 2004 DSH allotment is determined by increasing the \$49,735,000 FFY 2003 DSH allotment amount by 16 percent to \$57,692,600. In accordance with the provisions of section 1923(f)(3)(C) of the Act, the District of Columbia's DSH allotments for FFYs 2005, 2006, and 2007 are also \$57,692,600. Finally, in accordance with section 6054 of the DRA, the District of Columbia's DSH allotment is increased as described above, effective beginning with FFY 2006.

D. DSH Allotments for Low-DSH States for FFYs 2004, and Fiscal Years Thereafter

Section 1001(b)(1) of the MMA amended section 1923(f)(5) of the Act regarding the calculation of the fiscal year DSH allotments for "Low-DSH" States for FFY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by section 1001(b)(4) of the MMA, a State is considered a Low-DSH State for FFY 2004 if its total DSH payments under its State plan for FFY 2000 (including Federal and State shares) as reported to us as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FFY 2000 expenditures under its State plan for medical assistance. For States that meet the new Low-DSH criteria, their FFY

2004 DSH allotments are calculated by increasing their FFY 2003 DSH allotments by 16 percent. Therefore, for FFY 2004, Low-DSH States' fiscal year DSH allotments are calculated in the same way as the DSH allotments for regular States, which under section 1923(f)(3) of the Act get the special temporary increase for FFY 2004.

Furthermore, for States meeting the new MMA's Low-DSH definition, the DSH allotments for FFYs 2005 through 2008 will continue to be determined by increasing the previous fiscal year's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FFYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FFYs 2009 and subsequent fiscal years are calculated by increasing those States' DSH allotments for the prior fiscal year by the percentage change in the CPI-U for that prior fiscal year. For FFYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12-percent limit.

E. Institutions for Mental Diseases DSH Limits for FFYs 1998 and Thereafter

Under section 1923(h) to the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FFY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment (as reported on the Form CMS-64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities was calculated by first determining the State's total computable DSH expenditures attributable to the FFY 1995 DSH allotment for mental health facilities and inpatient hospitals. This calculation was based on the total computable DSH expenditures reported by the State on the Form CMS-64 as mental health DSH and inpatient hospital as of January 1, 1997. We then calculate an "applicable percentage." The applicable percentage for FFY 1998 through FFY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment by the total computable

amount of all DSH expenditures (mental health facility plus inpatient hospital) applicable to the FFY 1995 DSH allotment. For FFY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FFYs 1998 through 2001) or 50 percent for FFY 2001; 40 percent for FFY 2002; and 33 percent for each subsequent FFY.

The applicable percentage is then applied to each State's total computable FFY DSH allotment for the current FFY. The State's total computable FFY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FFY by the State's Federal medical assistance percentage (FMAP) for that FFY.

In the final step of the calculation of the IMD DSH Limit, the State's total computable IMD DSH limit for the FFY is set at the lesser of the product of a State's current fiscal year total computable DSH allotment and the applicable percentage for that fiscal year, or the State's FFY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS-64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

F. DSH Allotments and IMD DSH Limits Published in the Federal Register on August 26, 2005

On August 26, 2005, we published a notice (70 FR 50358) in the **Federal Register** that announced the final Federal share DSH allotments for Federal fiscal years (FFYs) 2003 and 2004, and the preliminary Federal share DSH allotments for FFY 2005. It also announced the final FFYs 2003 and 2004, and the preliminary FFY 2005, limitations on aggregate DSH payments that States may make to institutions for mental disease (IMDs) and other mental health facilities.

G. Publication in the Federal Register of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits

In general, we initially determine States' DSH allotments and IMD DSH limits for a fiscal year using estimates of medical assistance expenditures, including DSH expenditures in their Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS-37) before the Federal fiscal year for which the DSH allotments and IMD DSH limits are being determined. The DSH allotments and IMD DSH limits determined using

these estimates are referred to as “*preliminary*.” Only after we receive States’ reports of the actual related medical assistance expenditures through the quarterly expenditure report (Form CMS–64), which occurs after the end of the fiscal year, are the “*final*” DSH Allotments and IMD DSH limits determined.

As indicated in the section I.F. of this notice, the notice published in the **Federal Register** on August 26, 2005 announced the final FFYs 2003 and 2004 DSH allotments and the final FFYs 2003 and 2004 IMD DSH limits (since they were based on the actual expenditures related to those years), the *preliminary* FFY 2005 DSH allotments (based on estimates), and the preliminary IMD DSH limits (since they were based on the preliminary DSH allotments for FFY 2005).

This notice announces the *final* FFY 2005 DSH allotments and the *final* FFY 2005 IMD DSH limits (since these are now based on the actual expenditures for those fiscal years), the preliminary FFY 2006 and FFY 2007 DSH allotments (based on estimates), and the *preliminary* IMD DSH limits for FFY 2006 and FFY 2007 (since they are based on the *preliminary* DSH allotments for FFY 2006 and FFY 2007, respectively).

II. Calculation of the Final FFY 2005 Federal Share State DSH Allotments, the Preliminary FFY 2006 Federal Share State DSH Allotments, and the Preliminary FFY 2007 Federal Share State DSH Allotments

Chart 1 of the Addendum to this notice provides the States’ “*final*” FFY 2005 DSH allotments. The final FFY 2005 DSH allotments for each State were computed in accordance with the provisions of the Medicaid statute as amended by the MMA. As required by the provisions of the MMA, the final FFY 2004 DSH allotments for the “Low-DSH” States and all the other States were calculated by increasing the FFY 2003 DSH allotments by 16 percent. In the notice published on March 26, 2004 in the **Federal Register**, we explained the definition and determination of the “Low-DSH” States under the MMA provisions. However, for following fiscal years, the DSH allotments are determined under a process which incorporates a parallel process described in section I.C. of this notice. Under that parallel process, States final FFY 2005 DSH allotments were determined using the States’ expenditure reports (Form CMS–64) for FFY 2005.

Chart 3 of the Addendum to this notice provides the States’

“*preliminary*” FFY 2006 DSH allotments. These preliminary allotments were determined using the States’ August 2005 expenditure estimates submitted by the States on the Form CMS–37. We will publish the final FFY 2006 DSH allotments for each State following receipt of the States’ four quarterly Medicaid expenditure reports (Form CMS–64) for FFY 2006.

III. Calculation of the FFYs 2005 Through 2007 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD/DSH payments that exceed the lesser of the State’s FFY 1995 total computable mental health DSH expenditures applicable to the State’s FFY 1995 DSH allotment as reported to us on the Form CMS–64 as of January 1, 1997; or the amount equal to the product of the State’s current FFY total computable DSH allotment and the applicable percentage. We are publishing the final FFY 2005 IMD DSH limit, the preliminary FFY 2006 IMD DSH limit, and the preliminary FFY 2007 IMD DSH limit, along with an explanation of the calculation of these limits.

For FFY 2003 and following fiscal years, the applicable percentage is the lesser of 33 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000. This percentage was applied to the State’s fiscal year total computable DSH allotment. This result was then compared to the State’s FFY 1995 total computable mental health DSH expenditures applicable to the State’s FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State’s limitation on total computable IMD/DSH expenditures for FFY 2003 and following fiscal years.

Charts 4, 5, and 6 of the Addendum to this notice detail each State’s final IMD/DSH limitation for FFY 2005, the preliminary IMD/DSH limitation for FFY 2006, and the preliminary IMD/DSH limitation for FFY 2007, respectively, in accordance with section 1923(h) of the Act.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the

Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. Due to the various controlling statutes, the effects on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds.

The MMA set statutorily defined limits on the amount of Federal share DSH expenditures available for FFY 2004 and subsequent fiscal years. Specifically, section 1001 of the MMA increased the DSH allotment for States beginning with fiscal year 2004. While overall the statute mandated some increases in DSH payments, we do not

believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This notice will have no consequential effect on

State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the

requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Addendum

This addendum contains the charts 1 through 6 (including associated keys) that are referred to in the preamble of this notice.

BILLING CODE 4120-01-P

Chart 1.--Final DSH Allotments for FY 2005
[Key to the Chart of the Final FFY 2005 DSH Allotments. The final FFY 2005 DSH Allotments for the regular States are presented in the top section of this chart and the final FFY 2005 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share-- This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2005 DSH Allotment Federal Share--This column contains the final FFY 2005 DSH Allotments.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment--This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2005 DSH Allotments Federal Share--This column contains the final FFY 2005 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.

Chart 2.--Preliminary DSH Allotments for FY 2006	
[Key to the Chart of the Preliminary FFY 2006 DSH Allotments. The preliminary FFY 2006 DSH Allotments for the regular States are presented in the top section of this chart and the preliminary FFY 2006 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]	
Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share-- This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2006 DSH Allotment Federal Share--This column contains the preliminary FFY 2006 DSH Allotments.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment--This column contains the final FFY 2005 DSH Allotments.
Column C	FY 2006 DSH Allotments Federal Share--This column contains the preliminary FFY 2006 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.

Chart 3.--Preliminary DSH Allotments for FY 2007	
[Key to the Chart of the Preliminary FFY 2007 DSH Allotments. The preliminary FFY 2007 DSH Allotments for the regular States are presented in the top section of this chart and the preliminary FFY 2007 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]	
Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share-- This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2007 DSH Allotment Federal Share--This column contains the preliminary FFY 2007 DSH Allotments.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment--This column contains the final FFY 2006 DSH Allotments.
Column C	FY 2007 DSH Allotments Federal Share--This column contains the preliminary FFY 2007 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status--This column indicates the MMA Low-DSH Status of each State.

Chart 4.--Final FFY 2005 IMD DSH Limits	
[Key to the Chart of the FFY 2005 IMD Limitations.--The final FFY 2005 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FFY IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]	
Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the "applicable percentage" representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2005 Federal Share DSH Allotment. This column contains the States' final FFY 2005 DSH allotments.
Column G	FFY 2005 FMAP.
Column H	FY 2005 DSH Allotments in TC. Col. F/G. This column contains FFY 2005 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FFY 2005 total computable DSH allotment (calculated as Column E x Column H).
Column J	FY 2005 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2005 IMD DSH Limit Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G x Col. J).
Column L	LOW DSH Status. This column contains Low DSH status for each State.

Chart 5.--Preliminary FFY 2006 IMD DSH Limits
[Key to the Chart of the FFY 2006 IMD Limitations.--The preliminary FFY 2006 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2006 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col. C/D. This column contains the "applicable percentage" representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2006 Federal Share DSH Allotment. This column contains the States' preliminary FFY 2006 DSH allotments.
Column G	FFY 2006 FMAP.
Column H	FY 2006 DSH Allotment Total Computable Col. F/G. This column contains FFY 2006 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FFY 2006 total computable DSH allotment (calculated as Column E x Column H)
Column J	FY 2006 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2006 IMD DSH Limit Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G x Col. J).
Column L	Low DSH Status. This column contains Low DSH status for each State.

Chart 6.--Preliminary FFY 2007 IMD DSH Limits
[Key to the Chart of the FFY 2007 IMD Limitations.--The preliminary FFY 2007 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2007 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col. C/D. This column contains the "applicable percentage" representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2007 Federal Share DSH Allotment. This column contains the States' preliminary FFY 2007 DSH allotments.
Column G	FFY 2007 FMAP.
Column H	FY 2007 DSH Allotment Total Computable Col. F/G. This column contains FFY 2007 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FFY 2007 total computable DSH allotment (calculated as Column E x Column H)
Column J	FY 2007 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2007 IMD DSH Limit Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G x Col. J).
Column L	Low DSH Status. This column contains Low DSH status for each State.

FINAL DSH ALLOTMENTS FOR FY:		2005		
A	B	C	D	
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2005 DSH ALLOTMENTS	MMA LOW DSH STATUS	
ALABAMA	\$289,640,400	\$289,640,400	N/A	
ARIZONA	\$95,369,400	\$95,369,400	N/A	
CALIFORNIA	\$1,032,579,800	\$1,032,579,800	N/A	
COLORADO	\$87,127,600	\$87,127,600	N/A	
CONNECTICUT	\$188,384,000	\$188,384,000	N/A	
DISTRICT OF COLUMBIA	\$37,676,800	\$37,676,800	N/A	
FLORIDA	\$188,384,000	\$188,384,000	N/A	
GEORGIA	\$253,141,000	\$253,141,000	N/A	
HAWAII	\$0	\$0	N/A	
ILLINOIS	\$202,512,800	\$202,512,800	N/A	
INDIANA	\$201,335,400	\$201,335,400	N/A	
KANSAS	\$38,854,200	\$38,854,200	N/A	
KENTUCKY	\$136,578,400	\$136,578,400	N/A	
LOUISIANA	\$731,960,000	\$731,960,000	N/A	
MAINE	\$98,901,600	\$98,901,600	N/A	
MARYLAND	\$71,821,400	\$71,821,400	N/A	
MASSACHUSETTS	\$287,285,600	\$287,285,600	N/A	
MICHIGAN	\$249,608,800	\$249,608,800	N/A	
MISSISSIPPI	\$143,642,800	\$143,642,800	N/A	
MISSOURI	\$446,234,600	\$446,234,600	N/A	
NEVADA	\$43,563,800	\$43,563,800	N/A	
NEW HAMPSHIRE	\$150,800,000	\$150,800,000	N/A	
NEW JERSEY	\$606,361,000	\$606,361,000	N/A	
NEW YORK	\$1,512,959,000	\$1,512,959,000	N/A	
NORTH CAROLINA	\$277,866,400	\$277,866,400	N/A	
OHIO	\$382,655,000	\$382,655,000	N/A	
PENNSYLVANIA	\$528,652,600	\$528,652,600	N/A	
RHODE ISLAND	\$61,224,800	\$61,224,800	N/A	
SOUTH CAROLINA	\$308,478,800	\$308,478,800	N/A	
TENNESSEE	\$0	\$0	N/A	
TEXAS	\$900,711,000	\$900,711,000	N/A	
VERMONT	\$21,193,200	\$21,193,200	N/A	
VIRGINIA	\$82,519,327	\$82,519,327	N/A	
WASHINGTON	\$174,255,200	\$174,255,200	N/A	
WEST VIRGINIA	\$63,579,600	\$63,579,600	N/A	
SUBTOTAL	\$9,895,858,327	\$9,895,858,327		
LOW DSH STATES				
STATE	PRIOR FY ALLOTMENT (FY 2004)	PRIOR FY ALLOTMENT X FACTOR:		
		1.16		
ALASKA	\$10,596,600	\$12,292,056	LOW DSH	
ARKANSAS	\$22,440,879	\$26,031,420	LOW DSH	
DELAWARE	\$4,709,600	\$5,463,136	LOW DSH	
IDAHO	\$8,551,019	\$9,919,182	LOW DSH	
IOWA	\$20,486,621	\$23,764,480	LOW DSH	
MINNESOTA	\$38,854,200	\$45,070,872	LOW DSH	
MONTANA	\$5,904,833	\$6,849,606	LOW DSH	
NEBRASKA	\$14,721,132	\$17,076,513	LOW DSH	
NEW MEXICO	\$10,596,600	\$12,292,056	LOW DSH	
NORTH DAKOTA	\$4,969,075	\$5,764,127	LOW DSH	
OKLAHOMA	\$18,838,400	\$21,852,544	LOW DSH	
OREGON	\$23,548,000	\$27,315,680	LOW DSH	
SOUTH DAKOTA	\$5,745,580	\$6,664,873	LOW DSH	
UTAH	\$10,205,551	\$11,838,439	LOW DSH	
WISCONSIN	\$49,177,300	\$57,045,668	LOW DSH	
WYOMING	\$117,740	\$136,578	LOW DSH	
TOTAL LOW DSH STATES	\$249,463,130	\$289,377,230		
NATIONAL TOTAL	\$10,145,321,457	\$10,185,235,557		

PRELIMINARY DSH ALLOTMENTS FOR FY:		2006		
A	B	C	D	
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2006 DSH ALLOTMENTS	MMA LOW DSH STATUS	
ALABAMA	\$289,640,400	\$289,640,400	N/A	
ARIZONA	\$95,369,400	\$95,369,400	N/A	
CALIFORNIA	\$1,032,579,800	\$1,032,579,800	N/A	
COLORADO	\$87,127,600	\$87,127,600	N/A	
CONNECTICUT	\$188,384,000	\$188,384,000	N/A	
DISTRICT OF COLUMBIA*	\$37,676,800	\$57,692,600	N/A	
FLORIDA	\$188,384,000	\$188,384,000	N/A	
GEORGIA	\$253,141,000	\$253,141,000	N/A	
HAWAII	\$0	\$0	N/A	
ILLINOIS	\$202,512,800	\$202,512,800	N/A	
INDIANA	\$201,335,400	\$201,335,400	N/A	
KANSAS	\$38,854,200	\$38,854,200	N/A	
KENTUCKY	\$136,578,400	\$136,578,400	N/A	
LOUISIANA	\$731,960,000	\$731,960,000	N/A	
MAINE	\$98,901,600	\$98,901,600	N/A	
MARYLAND	\$71,821,400	\$71,821,400	N/A	
MASSACHUSETTS	\$287,285,600	\$287,285,600	N/A	
MICHIGAN	\$249,608,800	\$249,608,800	N/A	
MISSISSIPPI	\$143,642,800	\$143,642,800	N/A	
MISSOURI	\$446,234,600	\$446,234,600	N/A	
NEVADA	\$43,563,800	\$43,563,800	N/A	
NEW HAMPSHIRE	\$150,800,000	\$150,800,000	N/A	
NEW JERSEY	\$606,361,000	\$606,361,000	N/A	
NEW YORK	\$1,512,959,000	\$1,512,959,000	N/A	
NORTH CAROLINA	\$277,866,400	\$277,866,400	N/A	
OHIO	\$382,655,000	\$382,655,000	N/A	
PENNSYLVANIA	\$528,652,600	\$528,652,600	N/A	
RHODE ISLAND	\$61,224,800	\$61,224,800	N/A	
SOUTH CAROLINA	\$308,478,800	\$308,478,800	N/A	
TENNESSEE	\$0	\$0	N/A	
TEXAS	\$900,711,000	\$900,711,000	N/A	
VERMONT	\$21,193,200	\$21,193,200	N/A	
VIRGINIA	\$82,519,327	\$82,519,327	N/A	
WASHINGTON	\$174,255,200	\$174,255,200	N/A	
WEST VIRGINIA	\$63,579,600	\$63,579,600	N/A	
SUBTOTAL	\$9,895,858,327	\$9,915,874,127		
LOW DSH STATES				
STATE	PRIOR FY ALLOTMENT (FY 2005)	PRIOR FY ALLOTMENT X FACTOR:		
		1.16		
ALASKA	\$12,292,056	\$14,258,785	LOW DSH	
ARKANSAS	\$26,031,420	\$30,196,447	LOW DSH	
DELAWARE	\$5,463,136	\$6,337,238	LOW DSH	
IDAHO	\$9,919,182	\$11,506,251	LOW DSH	
IOWA	\$23,764,480	\$27,566,797	LOW DSH	
MINNESOTA	\$45,070,872	\$52,282,212	LOW DSH	
MONTANA	\$6,849,606	\$7,945,543	LOW DSH	
NEBRASKA	\$17,076,513	\$19,808,755	LOW DSH	
NEW MEXICO	\$12,292,056	\$14,258,785	LOW DSH	
NORTH DAKOTA	\$5,764,127	\$6,686,387	LOW DSH	
OKLAHOMA	\$21,852,544	\$25,348,951	LOW DSH	
OREGON	\$27,315,680	\$31,686,189	LOW DSH	
SOUTH DAKOTA	\$6,664,873	\$7,731,253	LOW DSH	
UTAH	\$11,838,439	\$13,732,589	LOW DSH	
WISCONSIN	\$57,045,668	\$66,172,975	LOW DSH	
WYOMING	\$136,578	\$158,430	LOW DSH	
TOTAL LOW DSH STATES	\$289,377,230	\$335,677,587		
NATIONAL TOTAL	\$10,185,235,557	\$10,251,551,714		
Footnotes				
*DC FY 2006 allotment determined under section 6054 of the Deficit Reduction Act of 2005				

PRELIMINARY DSH ALLOTMENTS FOR FY:		2007	
A	B	C	D
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2007 DSH ALLOTMENTS	MMA LOW DSH STATUS
ALABAMA	\$289,640,400	\$289,640,400	N/A
ARIZONA	\$95,369,400	\$95,369,400	N/A
CALIFORNIA	\$1,032,579,800	\$1,032,579,800	N/A
COLORADO	\$87,127,600	\$87,127,600	N/A
CONNECTICUT	\$188,384,000	\$188,384,000	N/A
DISTRICT OF COLUMBIA	\$37,676,800	\$57,692,600	N/A
FLORIDA	\$188,384,000	\$188,384,000	N/A
GEORGIA	\$253,141,000	\$253,141,000	N/A
HAWAII	\$0	\$0	N/A
ILLINOIS	\$202,512,800	\$202,512,800	N/A
INDIANA	\$201,335,400	\$201,335,400	N/A
KANSAS	\$38,854,200	\$38,854,200	N/A
KENTUCKY	\$136,578,400	\$136,578,400	N/A
LOUISIANA	\$731,960,000	\$731,960,000	N/A
MAINE	\$98,901,600	\$98,901,600	N/A
MARYLAND	\$71,821,400	\$71,821,400	N/A
MASSACHUSETTS	\$287,285,600	\$287,285,600	N/A
MICHIGAN	\$249,608,800	\$249,608,800	N/A
MISSISSIPPI	\$143,642,800	\$143,642,800	N/A
MISSOURI	\$446,234,600	\$446,234,600	N/A
NEVADA	\$43,563,800	\$43,563,800	N/A
NEW HAMPSHIRE	\$150,800,000	\$150,800,000	N/A
NEW JERSEY	\$606,361,000	\$606,361,000	N/A
NEW YORK	\$1,512,959,000	\$1,512,959,000	N/A
NORTH CAROLINA	\$277,866,400	\$277,866,400	N/A
OHIO	\$382,655,000	\$382,655,000	N/A
PENNSYLVANIA	\$528,652,600	\$528,652,600	N/A
RHODE ISLAND	\$61,224,800	\$61,224,800	N/A
SOUTH CAROLINA	\$308,478,800	\$308,478,800	N/A
TENNESSEE	\$0	\$0	N/A
TEXAS	\$900,711,000	\$900,711,000	N/A
VERMONT	\$21,193,200	\$21,193,200	N/A
VIRGINIA	\$82,519,327	\$82,519,327	N/A
WASHINGTON	\$174,255,200	\$174,255,200	N/A
WEST VIRGINIA	\$63,579,600	\$63,579,600	N/A
SUBTOTAL	\$9,895,858,327	\$9,915,874,127	
LOW DSH STATES			
STATE	PRIOR FY ALLOTMENT (FY 2006)	PRIOR FY ALLOTMENT	
		X FACTOR: 1.16	
ALASKA	\$14,258,785	\$16,540,191	LOW DSH
ARKANSAS	\$30,196,447	\$35,027,879	LOW DSH
DELAWARE	\$6,337,238	\$7,351,196	LOW DSH
IDAHO	\$11,506,251	\$13,347,251	LOW DSH
IOWA	\$27,566,797	\$31,977,485	LOW DSH
MINNESOTA	\$52,282,212	\$60,647,366	LOW DSH
MONTANA	\$7,945,543	\$9,216,830	LOW DSH
NEBRASKA	\$19,808,755	\$22,978,156	LOW DSH
NEW MEXICO	\$14,258,785	\$16,540,191	LOW DSH
NORTH DAKOTA	\$6,686,387	\$7,756,209	LOW DSH
OKLAHOMA	\$25,348,951	\$29,404,783	LOW DSH
OREGON	\$31,686,189	\$36,755,979	LOW DSH
SOUTH DAKOTA	\$7,731,253	\$8,968,253	LOW DSH
UTAH	\$13,732,589	\$15,929,803	LOW DSH
WISCONSIN	\$66,172,975	\$76,760,651	LOW DSH
WYOMING	\$158,430	\$183,779	LOW DSH
TOTAL LOW DSH STATES	\$335,677,587	\$389,386,002	
NATIONAL TOTAL	\$10,231,535,914	\$10,305,260,129	

A STATE	B INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	C IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	D TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B+C	E APPLICABLE PERCENT Col CD	F FY 2005 ALLOTMENT IN FS	G FY 2005 FMAP	H FY 2005 ALLOTMENTS IN TC Col FG	FINAL IMD DSH LIMIT FOR FY:			K FY 2005 IND LIMIT IN FS Col G+J	L MMA LOW DSH STATUS
								COL E * COL H IN TC	TC IND LIMIT (Leaser of Col I or Col G)	FY 2005 IND LIMIT IN FS Col J		
ALABAMA	\$413,006,229	\$41,457,859	\$454,464,088	1.07%	\$89,640,400	70.83%	\$408,923,338	\$4,960,758	\$3,950,758	\$3,088,724	N/A	
ALASKA	\$83,916,100	\$28,474,900	\$112,391,000	23.27%	\$95,369,400	67.45%	\$141,392,735	\$32,859,752	\$28,474,900	\$19,206,320	N/A	
ARIZONA	\$2,189,879,543	\$1,555,919	\$2,191,435,462	0.07%	\$1,032,579,800	50.00%	\$2,065,159,600	\$1,466,263	\$1,466,263	\$733,132	N/A	
CALIFORNIA	\$173,900,441	\$694,776	\$174,595,217	0.34%	\$187,127,600	50.00%	\$174,255,200	\$593,958	\$593,958	\$296,079	N/A	
COLORADO	\$303,359,224	\$1,055,733,725	\$4,009,933,000	25.82%	\$188,384,000	50.00%	\$376,768,000	\$97,269,127	\$97,269,127	\$48,624,863	N/A	
CONNECTICUT	\$39,532,224	\$6,545,136	\$46,077,360	14.20%	\$47,676,800	70.00%	\$50,824,000	\$7,645,136	\$7,645,136	\$4,581,935	N/A	
DISTRICT OF COLUMBIA	\$184,486,014	\$1,049,114,986	\$2,841,183,000	33.00%	\$183,384,000	59.90%	\$319,837,018	\$1,035,446,214	\$1,035,446,214	\$62,166,720	N/A	
FLORIDA	\$27,343,557	\$0	\$27,343,557	0.00%	\$253,141,000	60.44%	\$41,838,245	\$0	\$0	\$0	N/A	
GEORGIA	\$0	\$0	\$0	0.00%	\$0	58.47%	\$0	\$0	\$0	\$0	N/A	
HAWAII	\$315,969,508	\$89,408,276	\$405,377,784	22.06%	\$202,512,800	50.00%	\$405,025,600	\$89,352,862	\$89,352,862	\$44,676,431	N/A	
ILLINOIS	\$19,950,783	\$153,556,302	\$173,507,085	33.00%	\$201,335,400	62.78%	\$320,659,604	\$1,030,968	\$1,030,968	\$65,440,667	N/A	
INDIANA	\$11,597,208	\$76,653,508	\$88,250,716	33.00%	\$38,854,200	61.01%	\$53,684,970	\$21,016,040	\$21,016,040	\$12,821,666	N/A	
KANSAS	\$158,804,908	\$37,443,072	\$196,247,981	19.08%	\$136,578,400	69.60%	\$196,233,333	\$37,440,278	\$37,440,278	\$26,056,434	N/A	
KENTUCKY	\$1,078,512,169	\$132,917,149	\$1,211,429,318	10.97%	\$731,980,000	71.04%	\$1,030,349,699	\$13,049,158	\$13,049,158	\$80,310,122	N/A	
LOUISIANA	\$69,957,968	\$60,568,342	\$130,526,310	33.00%	\$38,921,600	64.89%	\$152,414,939	\$50,296,659	\$50,296,659	\$27,637,628	N/A	
MAINE	\$22,228,467	\$120,813,531	\$143,041,998	33.00%	\$71,821,400	50.00%	\$143,642,800	\$47,402,124	\$47,402,124	\$23,701,662	N/A	
MARYLAND	\$439,653,946	\$105,835,054	\$545,488,999	18.36%	\$281,285,600	50.00%	\$574,571,200	\$105,835,054	\$105,835,054	\$52,751,625	N/A	
MASSACHUSETTS	\$133,239,800	\$304,785,352	\$438,025,152	33.00%	\$438,025,152	56.71%	\$440,149,333	\$165,249,346	\$165,249,346	\$85,370,904	N/A	
MICHIGAN	\$187,608,033	\$0	\$187,608,033	0.00%	\$448,294,600	77.08%	\$729,737,694	\$487,392,791	\$487,392,791	\$128,723,869	N/A	
MISSISSIPPI	\$521,946,524	\$207,234,618	\$729,181,142	28.42%	\$443,563,800	55.90%	\$77,951,664	\$0	\$0	\$0	N/A	
MISSOURI	\$73,560,000	\$0	\$73,560,000	0.00%	\$150,800,000	50.00%	\$301,600,000	\$99,528,000	\$99,528,000	\$47,376,874	N/A	
NEVADA	\$92,675,916	\$94,753,948	\$187,429,864	33.00%	\$606,381,000	50.00%	\$1,212,722,000	\$396,111,755	\$396,111,755	\$178,685,231	N/A	
NEW HAMPSHIRE	\$726,746,539	\$597,370,461	\$1,324,116,999	32.66%	\$1,512,959,000	50.00%	\$3,025,918,000	\$605,409,880	\$605,409,880	\$92,500,000	N/A	
NEW JERSEY	\$2,418,869,368	\$695,072,827	\$3,113,942,195	20.11%	\$2,716,866,400	50.00%	\$4,396,650,869	\$144,107,987	\$144,107,987	\$91,669,912	N/A	
NEW YORK	\$193,201,966	\$193,201,966	\$386,403,932	14.85%	\$382,655,200	59.68%	\$641,177,949	\$95,416,758	\$95,416,758	\$55,780,470	N/A	
NORTH CAROLINA	\$535,231,966	\$89,432,759	\$624,664,725	33.00%	\$624,664,725	53.84%	\$881,856,617	\$324,025,453	\$324,025,453	\$174,455,454	N/A	
NORTH DAKOTA	\$88,202,319	\$579,199,832	\$667,402,151	33.00%	\$624,664,725	53.38%	\$1,105,553,691	\$230,330,330	\$230,330,330	\$1,223,965	N/A	
OHIO	\$109,503,107	\$2,397,833	\$111,900,940	2.18%	\$61,224,600	69.87%	\$441,377,533	\$72,306,720	\$72,306,720	\$50,374,155	N/A	
OKLAHOMA	\$366,681,364	\$270,734,341	\$637,415,705	16.45%	\$308,478,800	69.87%	\$611,377,533	\$296,075,698	\$296,075,698	\$174,134,777	N/A	
OREGON	\$1,220,515,401	\$292,813,592	\$1,513,328,993	19.33%	\$900,711,000	60.87%	\$1,729,728,931	\$55,257,862	\$55,257,862	\$5,452,157	N/A	
PENNSYLVANIA	\$19,979,252	\$9,050,549	\$29,029,801	31.23%	\$21,189,200	60.11%	\$35,257,862	\$11,009,430	\$11,009,430	\$3,885,134	N/A	
RHODE ISLAND	\$129,313,480	\$7,070,269	\$136,383,749	5.67%	\$82,519,327	50.00%	\$165,038,654	\$9,354,826	\$9,354,826	\$7,770,268	N/A	
SOUTH CAROLINA	\$171,725,815	\$163,836,435	\$335,562,250	33.00%	\$174,255,200	50.00%	\$348,510,400	\$15,008,432	\$15,008,432	\$7,504,216	N/A	
TENNESSEE	\$66,962,606	\$18,887,045	\$85,849,651	22.00%	\$63,579,600	74.65%	\$95,170,261	\$18,737,578	\$18,737,578	\$13,967,602	N/A	
TEXAS	\$13,402,466,846	\$4,118,258,904	\$17,520,725,750	23.50%	\$3,885,858,327	69.87%	\$17,545,427,267	\$3,351,704,654	\$3,351,704,654	\$1,844,337,027	N/A	
UTAH	\$2,506,327	\$17,611,765	\$20,118,092	33.00%	\$12,292,056	57.58%	\$21,347,787	\$7,044,770	\$7,044,770	\$4,056,378	LOW DSH	
VERMONT	\$2,422,649	\$819,351	\$3,241,999	25.27%	\$26,031,420	74.75%	\$34,824,642	\$8,801,235	\$8,801,235	\$12,665	LOW DSH	
VIRGINIA	\$0	\$7,669,000	\$7,669,000	33.00%	\$5,483,136	50.38%	\$10,843,859	\$3,578,473	\$3,578,473	\$1,802,835	LOW DSH	
WASHINGTON	\$2,081,429	\$0	\$2,081,429	0.00%	\$9,919,182	70.62%	\$14,045,854	\$0	\$0	\$0	LOW DSH	
WEST VIRGINIA	\$12,011,250	\$0	\$12,011,250	0.00%	\$23,784,480	63.54%	\$37,394,330	\$0	\$0	\$0	LOW DSH	
WISCONSIN	\$24,240,000	\$5,257,214	\$29,497,214	17.82%	\$45,070,872	50.00%	\$60,141,744	\$16,965,736	\$16,965,736	\$2,628,607	LOW DSH	
WYOMING	\$37,048	\$0	\$37,048	0.00%	\$6,849,600	71.90%	\$9,536,679	\$0	\$0	\$0	LOW DSH	
ALABAMA	\$6,449,015	\$82,478	\$6,531,493	21.93%	\$17,076,513	59.64%	\$28,632,651	\$6,278,526	\$6,278,526	\$1,080,281	LOW DSH	
ALASKA	\$5,496,015	\$254,786	\$5,750,801	3.78%	\$12,292,056	74.30%	\$16,543,617	\$624,945	\$624,945	\$189,366	LOW DSH	
ARIZONA	\$214,522	\$888,478	\$1,102,999	33.00%	\$5,784,127	67.49%	\$9,540,713	\$2,818,435	\$2,818,435	\$667,124	LOW DSH	
CALIFORNIA	\$20,019,969	\$23,283,417	\$43,303,386	14.05%	\$21,852,544	70.18%	\$44,691,685	\$4,375,605	\$4,375,605	\$2,297,165	LOW DSH	
COLORADO	\$19,975,092	\$19,975,092	\$39,950,184	33.00%	\$27,315,680	61.12%	\$54,681,685	\$14,748,322	\$14,748,322	\$9,014,174	LOW DSH	
CONNECTICUT	\$321,120	\$1,072,419	\$1,393,539	66.03%	\$6,684,873	70.93%	\$10,093,004	\$3,300,922	\$3,300,922	\$674,013	LOW DSH	
DISTRICT OF COLUMBIA	\$621,116	\$4,545,012	\$5,166,128	20.51%	\$1,838,439	72.14%	\$3,666,629	\$934,598	\$934,598	\$874,510	LOW DSH	
FLORIDA	\$6,603,524	\$4,492,011	\$11,095,535	33.00%	\$57,045,666	59.32%	\$97,814,931	\$32,278,927	\$32,278,927	\$2,619,441	LOW DSH	
GEORGIA	\$88,662,480	\$63,238,167	\$151,900,647	0.00%	\$289,377,200	57.90%	\$472,227,198	\$103,312,425	\$103,312,425	\$26,198,369	LOW DSH	
ILLINOIS	\$13,901,123,326	\$4,181,997,071	\$18,083,120,397	23.50%	\$10,185,235,557	69.87%	\$18,017,654,465	\$3,455,107,079	\$3,455,107,079	\$3,340,406,826	LOW DSH	
INDIANA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
KANSAS	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
KENTUCKY	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
LOUISIANA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MAINE	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MARYLAND	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MASSACHUSETTS	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MICHIGAN	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MISSISSIPPI	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
MISSOURI	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NEVADA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NEW HAMPSHIRE	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NEW JERSEY	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NEW YORK	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NORTH CAROLINA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
NORTH DAKOTA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
OHIO	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
OKLAHOMA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
OREGON	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
PENNSYLVANIA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
RHODE ISLAND	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
SOUTH CAROLINA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
TENNESSEE	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
TEXAS	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
UTAH	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
VERMONT	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
VIRGINIA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
WASHINGTON	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
WEST VIRGINIA	\$0	\$0	\$0	0.00%	\$0	0.00%	\$0	\$0	\$0	\$0	LOW DSH	
TOTAL	\$13,402,466,846	\$4,118,258,904	\$17,520,725,750	23.50%	\$3,885,858,327	69.87%	\$17,545,427,267	\$3,351,704,654	\$3,351,704,654	\$1,844,337,027	N/A	
LOW DSH STATES	\$2,506,327	\$17,611,765	\$20,118,092	33.00%	\$12,292,056	57.58%	\$21,347,787	\$7,044,770	\$7,044,770	\$4,056,378	LOW DSH	
ALABAMA	\$2,506,327	\$17,611,765	\$20,118,092	33.00%	\$12,292,056	57.58%	\$21,347,787	\$7,044,770	\$7,044,770	\$4,056,378	LOW DSH	
ALASKA	\$2,422,649	\$819,351	\$3,241,999	25.27%	\$26,031,420	74.75%	\$34,824,642	\$8,801,235	\$8,801,235	\$12,665	LOW DSH	
ARIZONA	\$0	\$7,669,000	\$7,669,000	33.00%	\$5,483,136	50.38%	\$10,843,859	\$3,578,473	\$3,578,473	\$1,802,835	LOW DSH	
CALIFORNIA	\$2,081,429	\$0	\$2,081,429	0.00%	\$9,919,182	70.62%	\$14,045,854	\$0	\$0	\$0	LOW DSH	
COLORADO	\$12,011,250	\$0	\$12,011,250	0.00%	\$23,784,480	63.54%	\$37,394,330	\$0	\$0	\$0	LOW DSH	
CONNECTICUT	\$24,240,000	\$5,257,214	\$29,497,214	17.82%	\$45,070,872	50.00%	\$60,141,744	\$16,965,736	\$16,965,736	\$2,628,607	LOW DSH	
DISTRICT OF COLUMBIA	\$37,048	\$0	\$37,048	0.00%	\$6,							

A STATE	B INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	C IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	D TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	E APPLICABLE PERCENT Col CD	F FY 2006 ALLOTMENT IN F/S	G FY 2006 FMAP	H FY 2006 ALLOTMENTS IN TC Col F/G	I COL E * COL H IN TC	PRELIMINARY MD DSH LIMIT FOR FY:			L MMA LOW DSH STATUS
									J FY 2006 TC MD LIMIT (Lesser of Col I or Col J)	K FY 2006 MD LIMIT IN F/S Col G, J		
ALABAMA	\$413,006,229	\$4,451,770	\$417,457,999	1.07%	\$289,840,400	65.1%	\$416,688,822	\$4,449,967	\$3,088,724	\$4,449,967	\$3,088,724	N/A
ALASKA	\$93,916,100	\$29,474,900	\$123,391,000	23.27%	\$55,369,400	66.9%	\$142,304,891	\$3,126,582	\$1,072,468	\$3,126,582	\$1,072,468	N/A
ARIZONA	\$2,189,879,543	\$1,555,919	\$2,191,435,462	0.071%	\$1,025,579,600	50.00%	\$2,025,159,600	\$1,466,263	\$733,132	\$1,466,263	\$733,132	N/A
COLORADO	\$173,900,441	\$594,776	\$174,495,217	0.34%	\$87,127,600	50.00%	\$174,259,200	\$593,958	\$296,579	\$593,958	\$296,579	N/A
CONNECTICUT	\$303,359,275	\$105,873,725	\$409,233,000	25.82%	\$189,394,000	50.00%	\$376,768,000	\$97,269,727	\$48,634,863	\$97,269,727	\$48,634,863	N/A
DISTRICT OF COLUMBIA	\$39,532,234	\$6,545,136	\$46,077,370	14.20%	\$27,652,000	70.00%	\$82,418,000	\$11,707,201	\$4,581,995	\$11,707,201	\$4,581,995	N/A
FLORIDA	\$184,456,014	\$149,114,986	\$333,571,000	33.00%	\$188,364,000	58.89%	\$319,891,323	\$105,564,137	\$62,169,720	\$105,564,137	\$62,169,720	N/A
GEORGIA	\$407,340,537	\$0	\$407,340,537	0.00%	\$253,141,000	60.66%	\$417,724,422	\$0	\$0	\$0	\$0	N/A
HAWAII	\$0	\$0	\$0	0.00%	\$0	58.1%	\$0	\$0	\$0	\$0	\$0	N/A
ILLINOIS	\$315,859,508	\$89,408,278	\$405,267,786	22.06%	\$202,512,800	50.00%	\$405,025,600	\$89,352,862	\$44,876,431	\$89,352,862	\$44,876,431	N/A
INDIANA	\$79,960,783	\$23,527,065	\$103,487,848	33.00%	\$50,135,400	62.98%	\$191,681,466	\$105,494,890	\$66,480,889	\$105,494,890	\$66,480,889	N/A
KANSAS	\$11,597,208	\$176,663,508	\$188,260,716	33.00%	\$38,854,200	60.41%	\$84,317,497	\$21,224,774	\$12,851,688	\$21,224,774	\$12,851,688	N/A
KENTUCKY	\$150,804,908	\$37,443,073	\$188,247,981	19.08%	\$136,578,000	69.26%	\$197,198,650	\$37,443,073	\$25,930,072	\$37,443,073	\$25,930,072	N/A
LOUISIANA	\$1,078,512,169	\$1,392,617,149	\$2,471,129,318	10.97%	\$731,960,000	69.79%	\$1,048,803,554	\$115,073,968	\$60,310,122	\$115,073,968	\$60,310,122	N/A
MAINE	\$69,957,461	\$20,958,342	\$90,915,803	33.00%	\$98,901,600	62.90%	\$157,239,248	\$51,887,962	\$33,701,962	\$51,887,962	\$33,701,962	N/A
MARYLAND	\$22,226,467	\$120,833,531	\$143,059,998	33.00%	\$71,821,400	50.00%	\$143,642,800	\$47,402,124	\$23,701,962	\$47,402,124	\$23,701,962	N/A
MASSACHUSETTS	\$69,653,946	\$109,835,054	\$179,488,999	18.96%	\$287,285,600	50.00%	\$874,974,200	\$105,903,261	\$82,761,926	\$105,903,261	\$82,761,926	N/A
MICHIGAN	\$133,258,800	\$304,765,352	\$438,024,152	33.00%	\$249,608,800	56.59%	\$441,082,877	\$145,557,349	\$82,370,904	\$145,557,349	\$82,370,904	N/A
MISSISSIPPI	\$182,608,033	\$0	\$182,608,033	0.00%	\$149,642,800	76.00%	\$189,003,684	\$0	\$0	\$0	\$0	N/A
MISSOURI	\$521,946,524	\$307,234,618	\$829,181,142	28.42%	\$446,234,800	61.95%	\$720,546,746	\$204,780,707	\$126,820,692	\$204,780,707	\$126,820,692	N/A
NEVADA	\$73,660,000	\$0	\$73,660,000	0.00%	\$43,563,800	54.76%	\$79,554,054	\$0	\$0	\$0	\$0	N/A
NEW HAMPSHIRE	\$92,675,916	\$84,733,946	\$177,409,862	33.00%	\$150,800,000	50.00%	\$301,600,000	\$84,733,946	\$47,376,974	\$84,733,946	\$47,376,974	N/A
NEW JERSEY	\$736,742,539	\$357,370,461	\$1,094,113,000	32.66%	\$606,361,000	50.00%	\$1,212,722,000	\$397,370,461	\$178,685,231	\$397,370,461	\$178,685,231	N/A
NEW YORK	\$2,418,869,368	\$605,000,000	\$3,023,869,368	20.01%	\$1,512,959,000	50.00%	\$3,025,918,000	\$605,000,000	\$92,500,000	\$3,025,918,000	\$92,500,000	N/A
NORTH CAROLINA	\$143,201,965	\$236,072,827	\$379,274,792	33.00%	\$277,658,400	63.49%	\$437,653,804	\$144,425,755	\$91,685,912	\$144,425,755	\$91,685,912	N/A
OHIO	\$538,231,965	\$93,432,258	\$631,664,223	14.85%	\$439,036,400	59.86%	\$639,036,400	\$94,898,732	\$65,947,538	\$94,898,732	\$65,947,538	N/A
PENNSYLVANIA	\$388,207,319	\$79,199,882	\$467,407,201	33.00%	\$288,652,600	55.05%	\$869,313,456	\$316,903,466	\$174,453,158	\$316,903,466	\$174,453,158	N/A
RHODE ISLAND	\$108,503,167	\$2,397,633	\$110,900,800	2.18%	\$61,228,800	54.45%	\$112,442,241	\$23,431,152	\$1,305,620	\$61,228,800	\$1,305,620	N/A
SOUTH CAROLINA	\$368,891,364	\$720,763,341	\$1,089,654,705	16.43%	\$308,478,800	59.32%	\$445,006,924	\$73,102,963	\$49,963,328	\$73,102,963	\$49,963,328	N/A
TENNESSEE	\$0	\$0	\$0	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	\$0	N/A
TEXAS	\$1,220,515,401	\$392,613,592	\$1,613,128,993	19.33%	\$900,711,000	60.65%	\$1,484,851,632	\$287,056,048	\$174,134,277	\$287,056,048	\$174,134,277	N/A
VERMONT	\$19,978,252	\$9,071,297	\$29,049,549	31.23%	\$21,193,200	58.49%	\$36,233,866	\$11,314,359	\$5,305,602	\$21,193,200	\$5,305,602	N/A
VIRGINIA	\$129,319,460	\$7,770,268	\$137,089,728	5.67%	\$62,519,327	50.00%	\$165,038,654	\$9,354,826	\$3,885,134	\$9,354,826	\$3,885,134	N/A
WASHINGTON	\$171,725,815	\$163,836,435	\$335,562,250	33.00%	\$174,255,000	50.00%	\$348,510,000	\$15,008,432	\$7,504,216	\$15,008,432	\$7,504,216	N/A
WEST VIRGINIA	\$66,362,605	\$18,897,045	\$85,259,650	22.00%	\$63,579,600	72.96%	\$87,107,275	\$19,163,724	\$13,785,654	\$19,163,724	\$13,785,654	N/A
TOTAL	\$13,402,460,846	\$4,118,358,904	\$17,520,819,750		\$9,515,874,427		\$17,992,387,410	\$3,332,792,474	\$1,843,563,538	\$3,332,792,474	\$1,843,563,538	
LOW DSH STATES												
ALASKA	\$2,506,827	\$17,611,765	\$20,118,592	33.00%	\$14,258,788	50.16%	\$28,426,605	\$9,300,780	\$4,765,998	\$9,300,780	\$4,765,998	LOW DSH
ARKANSAS	\$2,422,649	\$819,351	\$3,242,000	25.27%	\$30,196,447	73.77%	\$40,933,234	\$10,345,061	\$604,535	\$40,933,234	\$604,535	LOW DSH
DELAWARE	\$0	\$7,669,000	\$7,669,000	33.00%	\$6,337,238	50.05%	\$12,651,703	\$4,175,052	\$2,091,288	\$4,175,052	\$2,091,288	LOW DSH
IDAHO	\$2,081,429	\$0	\$2,081,429	0.00%	\$11,508,651	69.91%	\$15,458,663	\$0	\$0	\$0	\$0	LOW DSH
IOWA	\$12,011,250	\$0	\$12,011,250	0.00%	\$27,568,797	63.61%	\$43,337,206	\$0	\$0	\$0	\$0	LOW DSH
MINNESOTA	\$24,240,000	\$5,257,214	\$29,497,214	17.82%	\$25,282,212	50.00%	\$104,654,424	\$18,636,263	\$2,628,027	\$25,282,212	\$2,628,027	LOW DSH
MONTANA	\$37,048	\$0	\$37,048	0.00%	\$1,945,543	70.34%	\$11,263,865	\$0	\$0	\$0	\$0	LOW DSH
NEBRASKA	\$6,449,102	\$1,811,337	\$8,260,439	21.93%	\$19,808,167	59.88%	\$20,040,467	\$757,032	\$181,289	\$19,808,167	\$181,289	LOW DSH
NEW MEXICO	\$6,490,015	\$254,786	\$6,744,801	3.78%	\$14,258,765	71.15%	\$10,153,967	\$3,950,809	\$650,513	\$10,153,967	\$650,513	LOW DSH
NORTH DAKOTA	\$214,523	\$988,478	\$1,202,999	33.00%	\$6,686,387	65.85%	\$10,153,967	\$988,478	\$222,863	\$10,153,967	\$222,863	LOW DSH
OKLAHOMA	\$20,019,959	\$23,273,248	\$43,293,207	14.05%	\$25,348,951	67.91%	\$37,397,273	\$3,273,248	\$1,456,442	\$37,397,273	\$1,456,442	LOW DSH
OREGON	\$11,437,908	\$19,975,092	\$31,413,000	33.00%	\$31,686,188	61.57%	\$51,463,682	\$16,983,015	\$2,222,863	\$51,463,682	\$2,222,863	LOW DSH
SOUTH DAKOTA	\$321,120	\$1,072,418	\$1,393,538	33.00%	\$7,731,253	66.07%	\$11,881,440	\$3,920,875	\$468,070	\$7,731,253	\$468,070	LOW DSH
UTAH	\$3,821,116	\$834,586	\$4,655,702	20.51%	\$19,407,277	70.76%	\$19,407,277	\$3,981,334	\$834,586	\$19,407,277	\$834,586	LOW DSH
WISCONSIN	\$6,809,524	\$4,482,011	\$11,291,535	33.00%	\$66,172,879	57.65%	\$114,763,958	\$37,878,719	\$5,589,644	\$114,763,958	\$5,589,644	LOW DSH
WYOMING	\$88,662,490	\$63,238,167	\$151,900,657	0.00%	\$33,677,987	54.25%	\$56,177,869	\$292,145	\$28,382,061	\$33,677,987	\$28,382,061	LOW DSH
TOTAL LOW DSH STATES	\$13,301,123,326	\$4,181,997,071	\$17,483,120,397		\$10,251,551,714		\$18,148,564,979	\$3,474,724,966	\$3,341,363,468	\$18,148,564,979	\$3,341,363,468	

STATE	PRELIMINARY IMD DSH LIMIT FOR FY:										IMHA LOW DSH STATUS
	A	B	C	D	E	F	G	H	I	J		K
	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INFANT & IMD MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col D	FY 2007 ALLOTMENT IN FFS	FY 2007 FMAP IN FFS	FY 2007 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	TC IMD LIMIT (Leaver of Col I or Col J)	FY 2007 IMD LIMIT IN FFS Col G + J	2007
ALABAMA	\$413,006,229	\$4,457,999	\$417,464,228	1.07%	\$289,640,400	\$8,855	\$298,495,255	\$4,465,764	\$4,465,764	\$3,065,044	N/A
ALASKA	\$33,916,100	\$83,474,900	\$117,391,000	23.27%	\$95,369,400	\$6,476	\$101,845,876	\$13,477,358	\$13,477,358	\$1,927,750	N/A
ARIZONA	\$2,189,875,548	\$1,555,913	\$3,745,790,461	0.07%	\$1,032,579,800	\$0,000	\$1,032,579,800	\$1,665,263	\$1,665,263	\$733,132	N/A
CALIFORNIA	\$173,900,441	\$394,778	\$174,295,219	0.34%	\$189,384,000	\$0,000	\$189,384,000	\$87,269,727	\$87,269,727	\$48,634,883	N/A
COLORADO	\$303,359,275	\$105,573,725	\$408,933,000	25.67%	\$289,359,275	\$0,000	\$289,359,275	\$82,418,000	\$82,418,000	\$6,541,595	N/A
CONNECTICUT	\$39,632,234	\$6,545,136	\$46,177,370	14.20%	\$33,637,234	\$0,000	\$33,637,234	\$320,599,047	\$320,599,047	\$62,166,720	N/A
DISTRICT OF COLUMBIA	\$184,468,014	\$149,714,966	\$334,182,980	33.00%	\$184,468,014	\$0,000	\$184,468,014	\$105,797,666	\$105,797,666	\$0,000	N/A
FLORIDA	\$407,343,557	\$407,343,557	\$814,687,114	0.00%	\$407,343,557	\$0,000	\$407,343,557	\$0,000	\$0,000	\$0,000	N/A
GEORGIA	\$315,869,508	\$89,408,276	\$405,277,784	22.05%	\$320,861,232	\$0,000	\$320,861,232	\$89,462,862	\$89,462,862	\$44,676,431	N/A
ILLINOIS	\$79,960,783	\$153,666,302	\$233,627,085	33.00%	\$201,335,400	\$2,616	\$201,338,016	\$106,118,323	\$106,118,323	\$66,440,862	N/A
INDIANA	\$11,587,208	\$76,663,508	\$88,250,716	33.00%	\$59,859,200	\$0,255	\$59,859,455	\$84,482,295	\$84,482,295	\$12,821,888	N/A
KANSAS	\$158,804,908	\$37,443,073	\$196,247,981	19.08%	\$138,804,908	\$0,000	\$138,804,908	\$37,443,073	\$37,443,073	\$28,052,868	N/A
KENTUCKY	\$107,812,189	\$132,917,149	\$240,729,338	10.97%	\$194,812,189	\$0,000	\$194,812,189	\$105,239,090	\$105,239,090	\$80,310,122	N/A
LOUISIANA	\$89,957,958	\$69,958,342	\$159,916,300	33.00%	\$129,958,342	\$0,000	\$129,958,342	\$51,984,523	\$51,984,523	\$32,837,528	N/A
MAINE	\$22,226,457	\$120,873,531	\$143,099,988	33.00%	\$100,873,531	\$0,000	\$100,873,531	\$47,402,124	\$47,402,124	\$23,701,062	N/A
MARYLAND	\$469,653,946	\$105,635,054	\$575,288,999	18.36%	\$469,653,946	\$0,000	\$469,653,946	\$105,635,054	\$105,635,054	\$82,761,625	N/A
MASSACHUSETTS	\$133,258,800	\$304,765,552	\$438,024,352	33.00%	\$304,765,552	\$0,000	\$304,765,552	\$442,725,768	\$442,725,768	\$82,370,984	N/A
MICHIGAN	\$182,606,033	\$207,234,618	\$389,840,651	0.00%	\$182,606,033	\$0,000	\$182,606,033	\$0,000	\$0,000	\$0,000	N/A
MISSISSIPPI	\$521,946,524	\$73,500,000	\$595,446,524	28.42%	\$521,946,524	\$0,000	\$521,946,524	\$205,877,746	\$205,877,746	\$126,820,829	N/A
MISSOURI	\$92,675,916	\$94,753,948	\$187,429,864	33.00%	\$152,675,916	\$0,000	\$152,675,916	\$94,753,948	\$94,753,948	\$47,376,974	N/A
NEVADA	\$736,742,538	\$357,370,461	\$1,094,113,000	32.66%	\$736,742,538	\$0,000	\$736,742,538	\$357,370,461	\$357,370,461	\$178,685,231	N/A
NEW HAMPSHIRE	\$2,418,869,368	\$605,000,000	\$3,023,869,368	20.01%	\$2,418,869,368	\$0,000	\$2,418,869,368	\$605,000,000	\$605,000,000	\$302,500,000	N/A
NEW JERSEY	\$171,725,815	\$335,562,260	\$507,288,075	14.85%	\$335,562,260	\$0,000	\$335,562,260	\$142,120,136	\$142,120,136	\$82,694,912	N/A
NEW YORK	\$535,731,956	\$673,199,662	\$1,208,931,618	33.00%	\$868,203,319	\$0,000	\$868,203,319	\$673,199,662	\$673,199,662	\$55,741,983	N/A
NORTH CAROLINA	\$108,503,167	\$2,927,833	\$111,431,000	2.16%	\$108,503,167	\$0,000	\$108,503,167	\$2,927,833	\$2,927,833	\$174,455,358	N/A
NORTH DAKOTA	\$385,991,364	\$72,076,341	\$458,067,705	16.43%	\$385,991,364	\$0,000	\$385,991,364	\$72,076,341	\$72,076,341	\$125,258,266	N/A
OHIO	\$1,220,515,401	\$292,513,592	\$1,513,028,993	19.33%	\$1,220,515,401	\$0,000	\$1,220,515,401	\$292,513,592	\$292,513,592	\$174,134,277	N/A
OKLAHOMA	\$19,979,292	\$9,071,297	\$29,050,589	31.23%	\$19,979,292	\$0,000	\$19,979,292	\$9,071,297	\$9,071,297	\$5,345,215	N/A
OREGON	\$179,313,480	\$137,083,748	\$316,397,228	5.67%	\$179,313,480	\$0,000	\$179,313,480	\$137,083,748	\$137,083,748	\$3,885,134	N/A
PENNSYLVANIA	\$171,725,815	\$335,562,260	\$507,288,075	14.85%	\$335,562,260	\$0,000	\$335,562,260	\$142,120,136	\$142,120,136	\$82,694,912	N/A
RHODE ISLAND	\$66,862,626	\$18,887,043	\$85,749,669	22.00%	\$66,862,626	\$0,000	\$66,862,626	\$18,887,043	\$18,887,043	\$13,753,546	N/A
SOUTH CAROLINA	\$13,402,460,846	\$4,118,758,994	\$17,521,219,840	0.00%	\$13,402,460,846	\$0,000	\$13,402,460,846	\$4,118,758,994	\$4,118,758,994	\$1,943,444,921	N/A
TENNESSEE	\$2,506,827	\$17,611,765	\$19,118,592	33.00%	\$2,506,827	\$0,000	\$2,506,827	\$17,611,765	\$17,611,765	\$5,458,263	LOW DSH
TEXAS	\$2,422,648	\$819,351	\$3,242,000	25.27%	\$2,422,648	\$0,000	\$2,422,648	\$819,351	\$819,351	\$601,158	LOW DSH
UTAH	\$2,081,429	\$7,069,000	\$9,150,429	33.00%	\$2,081,429	\$0,000	\$2,081,429	\$7,069,000	\$7,069,000	\$2,425,899	LOW DSH
VIRGINIA	\$12,011,250	\$0	\$12,011,250	0.00%	\$12,011,250	\$0,000	\$12,011,250	\$0	\$0	\$0	LOW DSH
WASHINGTON	\$24,240,000	\$5,257,214	\$29,497,214	17.82%	\$24,240,000	\$0,000	\$24,240,000	\$5,257,214	\$5,257,214	\$2,628,607	LOW DSH
WEST VIRGINIA	\$66,862,626	\$18,887,043	\$85,749,669	22.00%	\$66,862,626	\$0,000	\$66,862,626	\$18,887,043	\$18,887,043	\$13,753,546	LOW DSH
TOTAL	\$13,402,460,846	\$4,118,758,994	\$17,521,219,840	0.00%	\$13,402,460,846	\$0,000	\$13,402,460,846	\$4,118,758,994	\$4,118,758,994	\$1,943,444,921	N/A
ALASKA	\$2,506,827	\$17,611,765	\$19,118,592	33.00%	\$2,506,827	\$0,000	\$2,506,827	\$17,611,765	\$17,611,765	\$5,458,263	LOW DSH
ARIZONA	\$2,189,875,548	\$1,555,913	\$3,745,790,461	0.07%	\$1,032,579,800	\$0,000	\$1,032,579,800	\$1,665,263	\$1,665,263	\$733,132	N/A
CALIFORNIA	\$173,900,441	\$394,778	\$174,295,219	0.34%	\$189,384,000	\$0,000	\$189,384,000	\$87,269,727	\$87,269,727	\$48,634,883	N/A
COLORADO	\$303,359,275	\$105,573,725	\$408,933,000	25.67%	\$289,359,275	\$0,000	\$289,359,275	\$82,418,000	\$82,418,000	\$6,541,595	N/A
CONNECTICUT	\$39,632,234	\$6,545,136	\$46,177,370	14.20%	\$33,637,234	\$0,000	\$33,637,234	\$320,599,047	\$320,599,047	\$62,166,720	N/A
DISTRICT OF COLUMBIA	\$184,468,014	\$149,714,966	\$334,182,980	33.00%	\$184,468,014	\$0,000	\$184,468,014	\$105,797,666	\$105,797,666	\$0,000	N/A
FLORIDA	\$407,343,557	\$407,343,557	\$814,687,114	0.00%	\$407,343,557	\$0,000	\$407,343,557	\$0,000	\$0,000	\$0,000	N/A
GEORGIA	\$315,869,508	\$89,408,276	\$405,277,784	22.05%	\$320,861,232	\$0,000	\$320,861,232	\$89,462,862	\$89,462,862	\$44,676,431	N/A
ILLINOIS	\$79,960,783	\$153,666,302	\$233,627,085	33.00%	\$201,335,400	\$2,616	\$201,338,016	\$106,118,323	\$106,118,323	\$66,440,862	N/A
INDIANA	\$11,587,208	\$76,663,508	\$88,250,716	33.00%	\$59,859,200	\$0,255	\$59,859,455	\$84,482,295	\$84,482,295	\$12,821,888	N/A
KANSAS	\$158,804,908	\$37,443,073	\$196,247,981	19.08%	\$138,804,908	\$0,000	\$138,804,908	\$37,443,073	\$37,443,073	\$28,052,868	N/A
KENTUCKY	\$107,812,189	\$132,917,149	\$240,729,338	10.97%	\$194,812,189	\$0,000	\$194,812,189	\$105,239,090	\$105,239,090	\$80,310,122	N/A
LOUISIANA	\$89,957,958	\$69,958,342	\$159,916,300	33.00%	\$129,958,342	\$0,000	\$129,958,342	\$51,984,523	\$51,984,523	\$32,837,528	N/A
MAINE	\$22,226,457	\$120,873,531	\$143,099,988	33.00%	\$100,873,531	\$0,000	\$100,873,531	\$47,402,124	\$47,402,124	\$23,701,062	N/A
MARYLAND	\$469,653,946	\$105,635,054	\$575,288,999	18.36%	\$469,653,946	\$0,000	\$469,653,946	\$105,635,054	\$105,635,054	\$82,761,625	N/A
MASSACHUSETTS	\$133,258,800	\$304,765,552	\$438,024,352	33.00%	\$304,765,552	\$0,000	\$304,765,552	\$442,725,768	\$442,725,768	\$82,370,984	N/A
MICHIGAN	\$182,606,033	\$207,234,618	\$389,840,651	0.00%	\$182,606,033	\$0,000	\$182,606,033	\$0,000	\$0,000	\$0,000	N/A
MISSISSIPPI	\$521,946,524	\$73,500,000	\$595,446,524	28.42%	\$521,946,524	\$0,000	\$521,946,524	\$205,877,746	\$205,877,746	\$126,820,829	N/A
MISSOURI	\$92,675,916	\$94,753,948	\$187,429,864	33.00%	\$152,675,916	\$0,000	\$152,675,916	\$94,753,948	\$94,753,948	\$47,376,974	N/A
NEVADA	\$736,742,538	\$357,370,461	\$1,094,113,000	32.66%	\$736,742,538	\$0,000	\$736,742,538	\$357,370,461	\$357,370,461	\$178,685,231	N/A
NEW HAMPSHIRE	\$2,418,869,368	\$605,000,000	\$3,023,869,368	20.01%	\$2,418,869,368	\$0,000	\$2,418,869,368	\$605,000,000	\$605,000,000	\$302,500,000	N/A
NEW JERSEY	\$171,725,815	\$335,562,260	\$507,288,075	14.85%	\$335,562,260	\$0,000	\$335,562,260	\$142,120,136	\$142,120,136	\$82,694,912	N/A
NEW YORK	\$535,731,956	\$673,199,662	\$1,208,931,618	33.00%	\$868,203,319	\$0,000	\$868,203,319	\$673,199,662	\$673,199,662	\$55,741,983	N/A
NORTH CAROLINA	\$108,503,167	\$2,927,833	\$111,431,000	2.16%	\$108,503,167	\$0,000	\$108,503,167	\$2,927,833	\$2,927,833	\$174,455,358	N/A
NORTH DAKOTA	\$385,991,364	\$72,076,341	\$458,067,705	16.43%	\$385,991,364	\$0,000	\$385,991,364	\$72,076,341	\$72,076,341	\$125,258,266	N/A
OHIO	\$1,220,515,401	\$292,513,592	\$1,513,028,993	19.33%	\$1,220,515,401	\$0,000	\$1,220,515,401	\$292,513,592	\$292,513,592	\$174,134,277	N/A
OKLAHOMA	\$19,979,292	\$9,071,297	\$29,050,589	31.23%	\$19,979,292	\$0,000	\$19,979,292	\$9,071,297	\$9,071,297	\$5,345,215	N/A
OREGON	\$179,313,480	\$137,083,748	\$316,397,228	5.67%	\$179,313,480	\$0,000	\$179,313,480	\$137,083,748	\$137,083,748	\$3,885,134	N/A
PENNSYLVANIA	\$171,										

Authority: Section 1923(a)(2), (f), and (h) of the Social Security Act (42 U.S.C. 1396r-4(a)(2), (f), and (h), and Pub. L. 105-33).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 30, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 14, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06-8421 Filed 9-29-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1535-CN, CMS-8030-CN2]

RIN 0938-AO26, 0938-AO23

Medicare Program; Hospice Wage Index for Fiscal Year 2007; Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notices.

SUMMARY: This document corrects technical errors that appeared in the notice published in the September 1, 2006 **Federal Register**, entitled "Hospice Wage Index for Fiscal Year 2007" and a technical error in the notice that appeared in the September 18, 2006 **Federal Register** entitled "Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007."

DATES: *Effective Date:* The corrections to the Hospice Wage Index for Fiscal Year 2007 notice are effective on October 1, 2006. The correction to the Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007 notice is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Terri Deutsch, (410) 786-9462, for issues related to the hospital wage index for fiscal year 2007. M. Kent Clemens, (410) 786-6391, for issues related to the Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007.

SUPPLEMENTARY INFORMATION:

I. Corrections to the Hospice Wage Index for Fiscal Year 2007 Notice

A. Background

In FR Doc 6-7293, of September 1, 2006 (71 FR 52080) entitled, "Hospice Wage Index for Fiscal Year 2007," there were errors that we identify in section I.B. and correct in section I.C of this notice.

B. Summary of Errors

In the September 1, 2006 notice, on page 52087, we published an Addendum that list the updated urban and rural wage index values for hospices utilizing the Core-Based Statistical Areas (CBSA) designations. To ensure that hospice providers were able to identify their current wage index, the table contains the CBSA codes, CBSA county name, and CBSA wage index. However, we inadvertently omitted the title of the table. In addition, for CBSA code 33460, we made a typographical error when we entered the wage index value.

This correction notice is consistent with the published hospice wage index values that will be used to make payment as of October 1, 2006. In section I.C. of this notice, we correct these errors.

C. Correction of Errors

Make the following corrections to the September 1, 2006 notice (71 FR 52080):

1. On page 52087, before the table, insert the heading "TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS."
2. On page 52106, in the third column, in line 4, for CBSA code 33460, the wage index value "0.1778" is corrected to read "1.1778."

D. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C.553(b)). However, we can waive this notice and comment procedure if the Secretary finds that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The revisions contained in this document merely correct omissions and typographical errors in the addendum for Table A. These corrections are necessary to ensure that the notice accurately reflects the correct hospice wage index values. Since they are not

substantive, but merely technical, we find that public comments on these revisions are unnecessary. Therefore, we find good cause to waive notice and comment procedures.

In addition, the Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a notice. Since this notice simply makes technical modifications to a notice that has previously gone through notice-and-comment rulemaking, we believe good cause also exists under the APA to waive the 30-day delay in the effective date and that a delay in the correction's effective date is also unnecessary. Thus, these corrections are effective October 1, 2006.

II. Corrections to the Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007 Notice

A. Background

In FR Doc. 06-7709 of September 18, 2006 (71 FR 54665), there was a technical error in the calculation of the income-related monthly adjustment amounts. This error is identified and corrected in section II.B. of this notice. The provisions of this correction notice are effective as if they had been included in the document that appeared in the **Federal Register** on September 18, 2006. Accordingly, the corrections are effective January 1, 2007.

Under section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109-171) (DRA), in 2007 beneficiaries will be responsible for 33 percent of any applicable income-related monthly adjustment to the Part B premium. In the September 18, 2006 notice, we inadvertently stated that beneficiaries would only be responsible for "one-third of any applicable income-related monthly adjustment amount," and we used a value of 33 $\frac{1}{3}$ percent to calculate the income-related monthly adjustment amounts. In the September 22, 2006 correction notice, we corrected the income-related adjustment amounts to reflect a value of "33 percent" as the basis for the calculation of these rates. In this correction notice, we are correcting a value that we inadvertently missed in the correction notice we published in the September 22, 2006 **Federal Register** (71 FR 55480).

B. Correction of Error

In FR Doc. 06-7709 of September 18, 2006 (71 FR 54665), make the following correction:

On page 54672, in the first table, in the third column, in the fourth row, the amount "\$49.90" is corrected to read "\$49.40."

C. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

This notice corrects an inadvertent error in the notice that appeared in the **Federal Register** on September 18, 2006, entitled "Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007." In that notice, we also determined that notice and comment was unnecessary because the formulas used to calculate the Part B premium and the income-related monthly adjustment amounts are statutorily directed and we can exercise no discretion in applying those formulas. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest.

For the same reasons, we find good cause to waive notice and comment procedures with respect to this correction notice. In addition, this correction notice includes the changes necessary to correct a technical error in the computation of the income-related monthly adjustment amount under the statutory formula. Because these changes affect the amount of the Part B income-related monthly adjustment that will be paid by certain beneficiaries, it is in the public interest to ensure that these changes are made as soon after the publication of the original notice as possible.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2006.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 06–8430 Filed 9–29–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Immunology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 16, 2006, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rufina Carlos, Office of In Vitro Diagnostic Device Evaluation and Safety (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD. 20850, 240–276–0493 ext. 167, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512516. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a laboratory assay designed for the rapid detection of clinically relevant (greater than 0.2 millimeters) metastases in lymph node tissue removed from breast cancer patients. Results from the assay can be used to guide the surgeon's decision to excise additional lymph nodes and aid in staging.

Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at <http://www.fda.gov/cdrh/panel> (click on Upcoming CDRH Advisory Panel/Committee Meetings).

www.fda.gov/cdrh/panel (click on Upcoming CDRH Advisory Panel/Committee Meetings).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 30, 2006. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 30, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–827–7292, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–16319 Filed 10–2–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA)

publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on 301-443-1129

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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, utilizing automated collection techniques or other forms of information technology.

Proposed Project: HRSA AIDS Education and Training Centers Evaluation Activities (OMB No. 0915-0281)—Revision

The AIDS Education and Training Centers (AETC) Program, under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, supports a network of regional and cross-cutting national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating persons with HIV/AIDS. The purpose of the AETCs is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage individuals with HIV infection, and to help prevent high risk behaviors that lead to HIV transmission.

As part of an ongoing evaluation effort of AETC activities, information is needed on AETC training sessions, consultations, and technical assistance activities. Each regional center collects forms on AETC training events, and centers are required to report aggregate data on their activities to HRSA and the

HIV/AIDS Bureau (HAB). This data collection provides information on the number of training events, including clinical trainings and consultations, as well as technical assistance activities conducted by each regional center, the number of health care providers receiving professional training or consultation, and the time and effort expended on different levels of training and consultation activities. In addition, information is obtained on the populations served by the AETC trainees, and the increase in capacity achieved through training events. Collection of this information allows HRSA/HAB to provide information on training activities, types of education, and training provided to Ryan White CARE Act grantees, resource allocation, and capacity expansion.

Trainees are asked to complete the Participant Information Form (PIF) for each activity they complete, and trainers are asked to complete the Event Record (ER). The estimated annual response burden to trainers as well as attendees of training programs is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
PIF	94,641	1	94,641	0.2	18,928.2
ER	16,417	1	16,417	0.2	3,283
Total	111,058	.....	111,058	.....	22,211.2

The estimated annual burden to AETCs is as follows:

	Number of respondents	Responses per respondent	Total Responses	Hours per response	Total burden hours
Aggregate Data Set	12	2	24	32	768

The total burden hours are 22,979.2.

Send comments to Susan G. Queen, PhD., HRSA Reports Clearance Officer, Room 10-33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: September 25, 2006.

Cheryl R. Dammons,
 Director, Division of Policy Review and Coordination.
 [FR Doc. E6-16295 Filed 10-2-06; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92-463, notice is hereby given of the eleventh meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5 p.m. on Monday, November 13, 2006 and 8:30 a.m. to approximately 5 p.m. on Tuesday, November 14, 2006, at the Marriott Inn and Conference Center,

University of Maryland-College Park, 3501 University Boulevard East, Adelphi, MD 20783. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The agenda topics include: Consideration of public comments on and finalization of the Committee's draft report, Policy Issues Associated With Undertaking a Large U.S. Population Cohort Project on Genes, Environment and Disease; a review of the Committee's draft report on pharmacogenomics; a session related to the impact of gene patents and licensing practices on patient access to genetic and genomic technologies; and updates on developments at FDA and CMS

regarding the oversight of genetic tests and services and on other Federal activities relevant to the work and charter of SACGHS.

Time will be provided each day for public comments. The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301-496-9838 or e-mail at sc112c@nih.gov. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting, who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: <http://www4.od.nih.gov/oba/sacghs.htm>.

Dated: September 26, 2006.

Anna Snouffer,

Acting Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 06-8443 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (4 U.S.C. Appendix 2), notice is hereby given of meetings of the National Cancer Institute Board of Scientific Advisors.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors, TARGET Ad Hoc Subcommittee.

Date: November 1, 2006.

Time: 6 p.m. to 10 p.m.

Agenda: To discuss activities related to the BSA TARGET Ad Hoc Subcommittee.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Malcolm M. Smith, Executive Secretary, Pediatric Section, Clinical Investigation Branch, Clinical Therapy Evaluation Program, NCI, 6130 Executive Blvd., Bethesda, MD 20852, 301-496-2522, smithm@ctep.nci.nih.gov.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 2-3, 2006.

Time: November 2, 2006, 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: November 3, 2006, 8:30 a.m. to 1 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD., Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, RM. 8001, Bethesda, MD 20892, 301-496-5147, graypp@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/bsa.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8450 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical and Behavioral Research Facilities.

Date: October 11, 2006.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Steven Birken, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, Bethesda, MD 20892, 301-435-0815, birken@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Washington NPRC.

Date: October 24-26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Seattle, 1113 Sixth Avenue, Carlsbad Room, Seattle, WA 98101.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, Bethesda, MD 20892, 301-435-0814, lambert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: September 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8451 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR A J1 S Training Grants Review.

Date: December 5, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David George, PhD, Director, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, 301-496-8633, georged1@mail.nih.gov.

Dated: September 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8444 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Innovative Therapy Proposals.

Date: October 16-17, 2006.

Time: 7 p.m. to 8 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892-4874. (301) 594-4955. browner@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Trial Planning—R34.

Date: October 18, 2006.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kan Ma, PhD, Scientific Review Administrator, NIH/NIAMS, EP Review Branch, One Democracy Plaza, Suite 800, Bethesda, MD 20892-4872. 301-594-4952. mak2@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Scientist Development and Service Award.

Date: November 3, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892. 301-451-4838. washabac@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Corticosteroids in Childhood Disease.

Date: November 29, 2006.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael L. Bloom, PhD, Scientific Review Administrator, EP Review Branch, NIH—NIAMS Institute, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd, Bethesda, MD 20892-487. 301-594-4953.

Michael_Bloom@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8445 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Cognitive Behavioral Therapy for Irritable Bowel Syndrome.

Date: October 16, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 435-7791. goterrobinson@extra.nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hematopoietic Stem Cells.

Date: November 7, 2006.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-8886. edwardsm@extra.nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8446 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel HIV Therapies: Integrated Preclinical/Clinical Program.

Date: October 25-26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capital, 550 C Street, SW., Washington, DC 20004.

Contact Person: Thames E. Pickett, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-496-2550. pickettte@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel HIV Therapies: Integrated Preclinical/Clinical Program.

Date: October 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capital, 550 C Street, SW., Washington, DC 20004.

Contact Person: Thames E. Pickett, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-496-2550. pickettte@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8447 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, International Training Grants: ZES1 SET E D4.

Date: October 16-17, 2006.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Comfort Suites, 5219 Page Road, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709. 919/541-1446. eckertt1@niehs.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Pilot Study: famine, de novo mutations and schizophrenia.

Date: October 24, 2006.

Time: 10:30 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, PO Box 12233, MD EC-30, Research Triangle Park, NC 27709. (919) 541-0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: September 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8448 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: October 19–20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel Atlanta, 267 Marietta Street, Atlanta, GA 30303.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8449 Filed 10–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioanalytical and Biophysical Technologies Special Emphasis Panel.

Date: October 2, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723. nelsonja@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023 Bioengineering Research Partnerships.

Date: October 10, 2006.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Chicago O'Hare Airport, O'Hare Intl Airport, P.O. Box 66414, Chicago, IL 60666.

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, 301–435–2786. shonatr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: October 23, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367. boerboom@nih.gov.

Name of Committee: Immunology Integrated Review Group, Vaccines Against Microbial Diseases Study Section.

Date: October 26–27, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doubletree Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jian Wang, PhD., Scientific Review Administrator, Center for Specific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2778, wangjia@csr.nih.gov.

Name of Committee: Center for Scientific Review Emphasis Panel Risk, Prevention and Intervention for Addictions.

Date: October 26–27, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Gayle M. Boyd, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7808, Bethesda, MD 20892, 301–451–9956, gboyd@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–P (04): Radiation Biology and Therapy.

Date: October 26, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, zouzhiq@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Atherosclerosis and Vascular Function.

Date: October 26, 2006.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence E. Boerboom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, boerboom@nih.gov.

Name of Committee: Health of the Population Integrated Review Group Biostatistical Methods and Research Design Study Section.

Date: October 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, hardyan@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies R03S, R15S, and R21S.

Date: October 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301-435-3554, durrantv@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership PAR-04-023.

Date: October 27, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4106, MSC 7814, Bethesda, MD 20892, 301-435-1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular Devices.

Date: October 29-30, 2006.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301-435-2204, matsur@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Protein Polymerization Program Project.

Date: October 30-November 1, 2006.

Time: 7 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, 301-435-2681, koellerk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Development Special Emphasis Panel.

Date: October 30, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, ruvinser@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Transplantation, Tolerance, and Tumor Immunology.

Date: October 30, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301-435-1222, nigidas@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Electrolyte Metabolism.

Date: October 30, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435-1215, mcdonald@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling in Hematopoietic Diseases and Leukemia.

Date: October 30, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435-1739, gangulyc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental-Related SBIR/STTR.

Date: October 30, 2006.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301-435-1781, hoffeldt@csr.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8452 Filed 10-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application-Permit-Special License Unlading/Lading Overtime Services

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application/Permit/Special License, Unlading/Lading Overtime Services. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12381) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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, e.g., permitting electronic submission of responses.

Title: Application/Permit/Special License, Unlading/Lading Overtime Services

OMB Number: 1651-0005

Form Number: Form CBP-3171

Abstract: Form CBP-3171, is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen, which is subject to free or duty-paid entry.

Current Actions: This submission is to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, or other for-profit.

Estimated Number of Respondents: 399,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 51,870.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: September 26, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-16300 Filed 10-2-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Unaccompanied Articles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12389) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the

burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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, e.g., permitting electronic submission of responses.

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651-0014.

Form Number: CBP Form-3299.

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 150,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 25,000.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: September 26, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-16304 Filed 10-2-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request, Customs Declaration (Form 6059-B)

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12387) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006, to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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, e.g., permitting electronic submission of responses.

Title: Customs Declaration

OMB Number: 1651-0009

Form Number: CBP Form 6059-B

Abstract: The Customs Declaration, CBP Form 6059-B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations.

Current Actions: Extension without change.

Affected Public: Traveling public

Estimated Number of Respondents: 60,000,000

Estimated Time per Respondent: 4 minutes and 5 seconds

Estimated Total Annual Burden Hours: 4,038,000

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: September 26, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-16313 Filed 10-2-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5044-N-18]

Notice of Proposed Information Collection for Public Comment; Resident Opportunities and Supportive Services (ROSS) Program Forms for Applying for Funding

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* December 4, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of

Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410-5000.

FOR FURTHER INFORMATION CONTACT:

Aneita Waites, (202) 708-0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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: Application for the Resident Opportunities and Supportive Services (ROSS) Program.

OMB Approval Number: 2577-0229.

Form Number: HUD-52751, HUD-52752; HUD-52753, HUD-52754, HUD-52755, HUD-52756, HUD-52757, HUD-52763, HUD-52764, HUD-52767.

Description of the need for the information and proposed use: Applicants for ROSS grant funds submit applications for the following grant categories: ROSS/Family-Homeownership, ROSS-Elderly/Persons with Disabilities, and Family Self-Sufficiency for Public Housing. Applicants describe the activities they will undertake; indicate their expected outputs and outcomes; provide a budget; and indicate, in the case of nonprofit applicants, which resident groups support their application (per Congressional statute).

Respondents: Public Housing Authorities, not-for-profit organizations, public housing resident organizations, State, local or tribal governments.

Frequency of Submission: On occasion.

Number of respondents: 650.

Program subcomponent	Number of respondents	Annual responses	Hours per response	Estimated burden hours
Family	300	1	11.5	4,650
Elderly	150	1	11.5	2,325
FSS	200	1	4.25	850
Total	650	.....	.....	7,825

Total Estimated Burden Hours: 7,825.
Status: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Members of affected public: Public Housing Authorities, not-for-profit organizations, public housing resident organizations, State, local or tribal governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 650 PHAs, not-for-profit organizations, public housing resident groups, State, local or tribal organizations apply for funding under one of the subcomponent programs under ROSS each year, hours per respondent to complete and submit a ROSS application varies according to program subcomponent, the total reporting burden is 19,350 hours.

Dated: September 27, 2006.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing.

[FR Doc. 06-8466 Filed 10-2-06; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5038-N-04]

Notice of Proposed Information Collection: Comment Request: Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 4, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Karla Dailey or Priscilla Poindexter at telephone number 202-708-2035 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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: Youthbuild Program.

OMB Control Number: 2506-0142.

Description of the need for the Information and proposed use: The Youthbuild Program was authorized under section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. chapter 8011). Funded programs provide disadvantaged youth, predominately high school drop out with educational opportunities and job skills training. Information is collected from grant recipients to determine the use of funds and program results achieved. Information is also collected to allow the timely close-out of completed grants.

Agency form numbers, if applicable: HUD Forms 40211, Youthbuild Program Reports, SF1199A, Direct Deposit Sign-Up form, and HUD 27054, HUD LOCCS Voice Response System Access Authorization form.

Members of affected public: Public or private nonprofit agencies, including State or local housing agencies or authorities, State or units of local government, or any entity eligible to provide education and employment training under other Federal employment training programs.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response: The HUD Form series 40211 is a semi-annual report. The Youthbuild grant life cycle is approximately 30 months with approximately 300 active grantees during any 12-month cycle. Fiscal Year 2006 is the last year that Youthbuild grants will be funded by the Department so that there will be a declining number of grantees reporting during the three-year cycle covered by this information request. Two of the forms in the series are submitted on a semi-annual basis and other of the forms submitted as the final submission at grant closeout. The SF1199A is submitted one-time by new grantees as is the form HUD 27004, unless an organization changes banking information. The total estimate of burden hours is 35,830 hours.

Status of the proposed information collection: This notice precedes a continuation of the existing burden hour request. It is a proposed reduction from the prior approved request of 121,280. This decrease is due primarily to an end of the administration of new grants at the Department beginning in Federal Fiscal Year 2007.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 27, 2006.

Nelson R. Bregon,

General Deputy Secretary for Community Planning and Development.

[FR Doc. E6-16311 Filed 10-2-06; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of a Technical Agency Draft Recovery Plan for the Puerto Rican Parrot for Review and Comment**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the revised technical agency draft revised recovery plan for the Puerto Rican Parrot (*Amazona vittata vittata*). The Puerto Rican parrot, largely green with a red forehead and blue flight feathers, is one of nine extant *Amazona* parrots occurring in the West Indies. Measuring about 29 centimeters (11 inches) in length and weighing about 270 grams (10 ounces), this species is one of the smallest in its genus, although it is similar in size to other *Amazona* in the Greater Antilles. The current revision of the recovery plan incorporates new information, describes actions considered necessary for the conservation of this species, establishes criteria (important milestones) for recognizing the recovery levels for downlisting from endangered to threatened, and estimates the time and cost for implementing the recovery measures needed. Partnerships are a key element of this revised recovery plan. The Service solicits review and comment on this draft revised recovery plan.

DATES: In order to be considered, we must receive comments on the technical agency draft recovery plan on or before December 4, 2006.

ADDRESSES: If you wish to review this technical agency revised draft recovery plan, you may obtain a copy by contacting the Río Grande Field Station, U.S. Fish and Wildlife Service, P.O. Box 1600, Río Grande, Puerto Rico 00745 (telephone (787) 887-8769 Ext. 222) or by visiting our Web site at <http://endangered.fws.gov/recovery/index.html#plans>. If you wish to comment, you may submit your comments by either of two methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Río Grande Field Station, at Calle García de la Noceda No. 38, Río Grande, Puerto Rico, or fax your comments to (787) 887-7512.

Comments and materials received are available for public inspection on

request, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Fernando Núñez-García at the above address (Telephone 787/887-8769, ext. 223).

SUPPLEMENTARY INFORMATION:**Background**

Once abundant and widespread on the Puerto Rican archipelago, the Puerto Rican parrot is presently considered one of the 10 most endangered birds in the world. Since 1973, the number of wild parrots has never surpassed 47 birds, and currently stands at a minimum of 28 individuals mostly confined within the Caribbean National Forest boundaries in the Luquillo Mountains. The most abrupt change in population numbers since 1973 was caused by hurricane Hugo in 1989. It reduced the wild population size from 47 to about 23 individuals. Increases in the number of wild parrots have not been followed by proportional increases in the number of breeding individuals, which has never exceeded 12.

The Puerto Rican parrot is a fruit-eating cavity nester seldom seen far from forests. The decline of the parrot and its restricted distribution are due to many factors, mostly the widespread habitat loss (e.g., deforestation.) The extant parrot population may have retreated to the Luquillo Mountains because preferred lowland habitat was destroyed. Due to its nesting requirements, it depends on mature forests with large cavity-forming trees. Many stands of cavity-forming trees are old enough to meet nesting requirements in the Caribbean National Forest. Parrots concentrate their use of habitat within the largest remaining area of essentially unmodified forest. However, some observations suggest that the parrots are using private areas bordering the southern and northern parts of the Caribbean National Forest.

Despite the present low numbers and limited distribution, many of the historical threats, such as nest competition and predation of eggs and chicks by pearly-eyed thrashers (*Margarops fuscatus*), predation of fledglings and adults by red-tailed hawks (*Buteo jamaicensis*), predation by rats (*Rattus rattus* and *R. norvegicus*), parasitism by warble flies (*Philornis pici*), and the impact of hurricanes and competition for cavities with European and Africanized honeybees (*Apis mellifera*), have been controlled through management strategies.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-

sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft plan is to provide a framework for the recovery of the Puerto Rican parrot, so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and these criteria will be considered for removal of the Puerto Rican parrot from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Recovery Criteria for Downlisting

All of the following must occur:

1. A wild population in the Luquillo Mountains exists, with a population size and vital parameters consistent with a trajectory towards maintenance. This population will be characterized by breeding productivity rates of greater than or equal to 1.56 chicks per nesting attempt (wild), and first year survival rates of fledglings and released captive-reared birds of greater than 60 percent;

2. A second wild population in the northwestern karst region exists, with population sizes and vital parameters consistent with a trajectory towards maintenance. This population will be characterized by a breeding productivity of greater than or equal to 1.56 chicks per nesting attempt (wild), and first year survival rates of fledglings and released captive-reared birds of greater than 60 percent.

3. The reintroduction/creation of a third population or sub-population in the Luquillo mountains, or suitable forested area in the island.

4. Nesting and foraging habitats are protected to support growing populations.

Recovery Criteria for Delisting

All of the following must occur:

1. At least three interacting populations exist in the wild and population growth is sustained for 10 years after delisting has occurred. This will allow for monitoring of recruitment events and other population attributes in a species that has been characterized by highly variable reproductive and survival rates (Snyder et al. 1987; Muiznieks 2003). The populations should produce greater than or equal to 1.56 chicks per nesting attempt (average rate for the 1990s) and their survival rates should not drop below 90 percent for adults and 50 percent for juveniles. These rates assume that sub-adult survival rates are approximately 85 percent, age of first breeding is 4 years, and at least 60 percent of the adults engage in reproduction each year.
2. Long-term protection of the habitat occupied by each wild population is achieved.
3. Collection of the species for commercial, scientific, and/or educational purposes is controlled by Commonwealth laws and other regulatory mechanisms.
4. The effects of disease and predation factors are controlled to allow for population viability.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to final approval of the revised recovery plan.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 2006.

Cynthia Dohner,

Acting Regional Director.

[FR Doc. E6-16320 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for the Mississippi Band of Choctaw Indians' Proposed Fee-to-Trust Transfer and Casino Project, Jackson County, MS

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Mississippi Band of Choctaw Indians (MBCI), intends to collect information necessary to prepare an Environmental Impact Statement (EIS) for a proposed 61 acre fee-to-trust land transfer in Jackson County, Mississippi, and for the proposed use of that land, together with an adjacent 40 acre tract of Choctaw Reservation land in the same county, for a casino project. The purpose of the proposed action is to help meet land base and economic needs of the MBCI. This notice also announces a public scoping meeting to identify potential issues, alternatives and content for inclusion in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by November 2, 2006. The public scoping meeting will be held October 18, 2006, from 7 p.m. to 10 p.m., or until all those who wish to make statements have been heard.

ADDRESSES: You may mail, hand carry, or fax written comments to Franklin Keel, Regional Director, Eastern Region, Bureau of Indian Affairs, 545 Marriott Dr., Suite 700, Nashville, Tennessee 37214; fax (615) 564-1701. Electronic submissions via e-mail are not currently available.

The public scoping meeting will be held at Ocean Springs Civic Center, 3730 Bienville Boulevard, Ocean Springs, Mississippi 39564.

FOR FURTHER INFORMATION CONTACT: Kurt Chandler, (615) 564-6832.

SUPPLEMENTARY INFORMATION: The MBCI Reservation is comprised of various trust land parcels located in a number of counties in Mississippi, including Jackson County. The tribal offices are located in Choctaw, Mississippi, in Neshoba County.

The MBCI currently operates two businesses on land in Jackson County, *First American Printing & Direct Mail* and *First American Plastic Molding*. Together, before Hurricane Katrina, these facilities employed 100 full-time and 10 part-time workers from the Mississippi Gulf Coast. In August 2005, Hurricane Katrina caused substantial adverse impact to these operations through permanent loss of clients whose businesses were destroyed. It is highly probable that one or both of these operations will therefore be closed in the near future. For this reason, the tribe is urgently seeking to identify potential alternative uses of the land and its existing facilities.

The MBCI has identified a preferred use for this property that includes gaming and related amenities, in an effort to create a positive economic impact for itself and the local economy. The project area is located in Jackson County, immediately southwest of the intersection of State Highway 57 and Interstate 10. The property is bordered by State Highway 57 to the east, vacant undeveloped land to the west, and the Sunplex Industrial Park to the south.

The MBCI proposal is that approximately 61 acres be taken into trust, to be added to approximately 40 acres of adjacent, existing reservation lands for the construction of a casino, hotel and recreational complex. The proposed action encompasses the various federal approvals required to implement the 61 acre fee-to-trust transfer, plus approval of the combined 101 acre tract for gaming use under the Indian Gaming Regulatory Act.

Areas of environmental concern so far identified for analysis in the EIS include traffic, air quality, threatened and endangered species, wildlife habitat and conservation areas, wetlands, water supply, wastewater disposal, solid waste disposal, and socio-economic impacts. Alternatives so far identified for analysis are: (1) The preferred alternative, which would include a Class III casino, hotel, and retail center supported by adequate on-site parking, and which would both maximize potential economic benefits to the MBCI and create tax revenues and jobs for the local community; and (2) no action, under which the MBCI would close the existing businesses and abandon the facilities. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be

available for public review at the mailing address shown in the ADDRESSES section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 6, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary, Indian Affairs.

[FR Doc. E6-16259 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA-668-07-1220-PA-251A]

Monument Advisory Committee Scheduled Meeting Location Change

AGENCIES: Bureau of Land Management, Interior and Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) and the United States Forest Service (USFS) announce a change of meeting location for the December 2, 2006 scheduled meeting of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (hereinafter referred to as "MAC").

The meeting is scheduled to begin at 9 a.m. at the Mountain Station of the

Palm Springs Aerial Tramway, One Tramway Road, Palm Springs, California 92262. A special FREE Tram, leaving promptly at 8:45 a.m., is being provided for all MAC members, the media and members of the public interested in attending and speaking during the Public Comment period.

The focus of MAC meetings is implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan. Members of the public and the media are encouraged to attend and participate in MAC meetings. The Public Comment period begins at 11 a.m. A sign-up sheet for speakers will be available at the entrance of the meeting room on the day of the meeting. Speakers are requested to hold their comments to five minutes. Speakers may provide a written copy of their remarks and any additional remarks for inclusion in the meeting minutes.

An agenda will be posted on the Santa Rosa and San Jacinto Mountains National Monument Home Page at http://www.blm.gov/ca/palmsprings/santarosa/srsj_meetings.html, along with any other additional information for this meeting.

All National Monument meetings are open to the public with attendance limited only by the space available. Individuals attending who need special assistance, such as sign language interpretations or other reasonable accommodations, should notify the contact person listed below at least two weeks in advance of the meeting.

DATES: December 2, 2006; Free Tram ride departs the Valley Station of the Palm Springs Aerial Tramway at 8:45 a.m.; meeting begins at 9 a.m.; Public Comment period begins at 11 a.m.

ADDRESSES: December 2, 2006 meeting is being held at the Mountain Station of the Palm Springs Aerial Tramway, One Tramway Road, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT:

Written comments should be sent to the Santa Rosa and San Jacinto Mountains National Monument Manager, in-care-of the Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; by telephone (760) 251-4800, fax (760) 251-4899; or e-mail ca_srsj_nm@ca.blm.gov. Additional information regarding the National Monument and the MAC is posted on the National Monument Web pages located at: http://www.ca.blm.gov/palmsprings/santarosa/santa_rosa_national_monument.html.

Documents pertinent to this notice, including comments with the names and addresses of respondents, will be

available for public review at the BLM Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except for holidays.

SUPPLEMENTARY INFORMATION: Santa Rosa and San Jacinto Mountains National Monument was established to preserve nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains.

The MAC is a committee of volunteer citizens appointed to advise the Secretaries of the Interior and Agriculture with respect to implementation of the National Monument Management Plan. The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 note) authorized establishment of the MAC.

The 272,000-acre National Monument encompasses 86,400 acres of Bureau of Land Management lands; 64,400 acres of Forest Service lands; 23,000 acres of Agua Caliente Band of Cahuilla Indians lands; 8,500 acres of California Department of Parks and Recreation lands; 35,800 acres of other State of California lands; and 53,900 acres of privately owned lands.

Dated: September 12, 2006.

Gail Acheson,

Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office.

Dated: September 21, 2006.

Laurie Rosenthal,

District Ranger, USDA Forest Service, San Jacinto Ranger District, San Bernardino National Forest.

Dated: September 25, 2006.

Jim Foote,

Monument Manager, Santa Rosa and San Jacinto Mountains, National Monument.

[FR Doc. 06-8417 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1910-BK; Group 61, Louisiana]

Notice of Filing of Plat of Survey; Louisiana

The plat of the dependent resurvey and survey of the boundaries of lands held in trust by the United States, for the Tunica-Biloxi Tribe, in Townships 1 and 2 North, Range 4 East of the Louisiana Meridian, in the State of Louisiana, will be officially filed in Eastern States, Springfield, Virginia 30

calendar days from the date of publication in the **Federal Register**.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 26, 2006.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$2.75 per copy.

Dated: September 25, 2006.

Micheal W. Young,

Chief Cadastral Surveyor.

[FR Doc. E6-16321 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010-0051).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that will be submitted to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under “30 CFR 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.”

DATES: Submit comments by December 4, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010-0051 as an identifier in your message.

- Public Connect on-line commenting system, <https://ocsconnect.mms.gov>. Follow the instructions on the Web site for submitting comments.

- E-mail MMS at rules.comments@mms.gov. Identify with Information Collection Number 1010-0051 in the subject line.

- *Fax:* 703-787-1093. Identify with Information Collection Number 1010-0051.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Rules Process Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference “Information Collection 1010-0051” in your comments.

FOR FURTHER INFORMATION CONTACT:

Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.

OMB Control Number: 1010-0051.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation’s energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*) at section 1712(b)(2) prescribes that an operator will “develop and comply with such minimum site security measures as the Secretary deems appropriate, to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft.” These authorities and responsibilities are among those delegated to MMS under which regulations are issued to govern oil and gas and sulphur operations on the OCS. This information collection request addresses the regulations at 30 CFR part 250, subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security, and the associated supplementary notices to lessees and

operators intended to provide clarification, description, or explanation of these regulations.

MMS uses the information collected under subpart L to ensure that the volumes of hydrocarbons produced are measured accurately and that royalties are paid on the proper volumes. Specifically, MMS needs the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;

- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters, which can be examined during field inspections;

- Ascertain if all removals of oil and condensate from the lease are reported;

- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;

- Ensure that the sales location is secure and that production cannot be removed without the volumes being recorded; and

- Review proving reports to verify that data on run tickets are calculated and reported accurately.

MMS will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, “Data and information to be made available to the public.” No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies by section but primarily monthly or “on occasion.”

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping “Hour” and “Fee” Burden: The currently approved annual reporting burden for this collection is 7,433 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, MMS assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart L	Reporting or recordkeeping requirement	Hour/fee burden
1202(a)(1), (b)(1)	Submit application for liquid hydrocarbon measurement procedures or changes.	8 hours. \$1,200 Simple application fee. \$3,550 Complex application fee.
1202(a)(4)	Copy & send pipeline (retrograde) condensate volumes upon request.	45 minutes.
1202(c)(4)*	Copy & send all liquid hydrocarbon run tickets monthly	1 minute.
1202(d)(4)	Request approval for proving on a schedule other than monthly.	1 hour.
1202(d)(5)*	Copy & submit liquid hydrocarbon royalty meter proving reports monthly & request waiver as needed.	2 minutes.
1202(f)(2)*	Copy & submit mechanical-displacement prover & tank prover calibration reports.	10 minutes.
1202(l)(2)*	Copy & submit royalty tank calibration charts before using for royalty measurement.	15 minutes.
1202(l)(3)*	Copy & submit inventory tank calibration charts upon request.	15 minutes.
1203(b)(1)	Submit application for gas measurement procedures or changes.	8 hours. \$1,200 Simple application fee. \$3,550 Complex application fee.
1203(b)(6), (8), (9)*	Copy & submit gas quality and volume statements monthly or as requested (most will be routine; few will take longer).	2 minutes. 30 minutes.
1203(c)(4)*	Copy & submit gas meter calibration reports upon request.	5 minutes.
1203(e)(1)*	Copy & submit gas processing plant records upon request.	30 minutes.
1203(f)(5)	Copy & submit measuring records of gas lost or used on lease upon request.	30 minutes.
1204(a)(1)	Submit application for commingling of production or changes.	8 hours. \$1,200 Simple application fee. \$3,550 Complex application fee.
1204(a)(2)	Provide state production volumetric and/or fractional analysis data upon request.	1 hour.
1205(a)(2)	Post signs at royalty or inventory tank used in royalty determination process.	1 hour.
1205(a)(4)	Report security problems (telephone)	15 minutes.
1200 thru 1205	General departure and alternative compliance requests not specifically covered elsewhere in subpart L.	1 hour.

Reporting

1202(c)(1), (2); 1202(e)(4); 1202(h)(1), (2), (3), (4); 1202(i)(1)(iv), (2)(iii); 1202(j).	Record observed data, correction factors & net standard volume on royalty meter and tank run tickets. Record master meter calibration runs. Record mechanical-displacement prover, master meter, or tank prover proof runs. Record liquid hydrocarbon royalty meter malfunction and repair or adjustment on proving report; record unregistered production on run ticket. List Cpl and Ctl factors on run tickets.	Respondents record these items as part of normal business records & practices to verify accuracy of production measured for sale purposes.
1202(e)(6)	Retain master meter calibration reports for 2 years	1 minute.
1202(k)(5)	Retain liquid hydrocarbon allocation meter proving reports for 2 years.	1 minute.
1202(l)(3)	Retain liquid hydrocarbon inventory tank calibration charts for as long as tanks are in use.	5 minutes.
1203(c)(4)	Retain calibration reports for 2 years	1 minute.
1203(f)(4)	Document & retain measurement records on gas lost or used on lease for 2 years at field location and minimum 7 years at location of respondent's choice.	1 minute.
1204(b)(3)	Retain well test data for 2 years	2 minutes.
1205(b)(3), (4)	Retain seal number lists for 2 years	2 minutes.

* Respondents gather this information as part of their normal business practices. MMS only requires copies of readily available documents. There is no burden for testing, meter reading, etc.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: The currently approved "non-hour cost" burden for this information

collection is a total of \$1,077,437. This cost burden is for filing fees associated with submitting requests for approval of simple applications (applications to

temporarily reroute production (for a duration not to exceed 6 months); production tests prior to pipeline construction; departures related to

meter proving, well testing, or sampling frequency (\$1,200 per application)) or to submit requests for approval of complex applications (creation of new facility measurement points (FMPs); association of leases or units with existing FMPs; inclusion of production from additional structures; meter updates which add buyback gas meters or pigging meters; other applications which request deviations from the approved allocation procedures (\$3,550 per application)).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the “non-hour cost” burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (a) Before October 1, 1995; (b) to comply with requirements not associated with the information collection; (c) for reasons other than to provide information or keep records for

the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS’s practice is to make comments, including the names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent’s identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure “would constitute an unwarranted invasion of privacy.” Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. However, we will not consider anonymous comments. Except for proprietary information, 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.

MMS Federal Register Liaison Officer: Arlene Bajusz, (202) 208-7744.

Dated: September 26, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.
[FR Doc. E6-16305 Filed 10-2-06; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA1921-197 (Second Review); 701-TA-319, 320, 325-328, 348, and 350 (Second Review); and 731-TA-573, 574, 576, 578, 582-587, 612, and 614-618 (Second Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

DATES: *Effective Date:* September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202-205-3188) or Douglas Corkran (202-205-3057), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective March 22, 2006, the Commission established a schedule for the conduct of the subject full reviews (71 FR 16178, March 30, 2006). Subsequently, counsel on behalf of domestic interested parties, IPSCO Steel, Inc., Mittal Steel, Nucor, and Oregon Steel Mills, requested that the Commission postpone its deadline for the filing of prehearing briefs for the cut-to-length plate portion of the reviews by one day. Counsel cited the burden of filing prehearing briefs on cut-to-length plate and corrosion-resistant steel on the same day.¹ No party to the reviews objected to the requested postponement. The Commission, therefore, is revising its schedule to incorporate this change to the schedule of the reviews.

The Commission’s new schedule for the reviews is as follows: The deadline for filing prehearing briefs for the CTL steel plate portion of the reviews is October 6, 2006.

For further information concerning these reviews see the Commission’s notice cited above and the Commission’s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission’s rules.

By order of the Commission.

¹ Correspondence of September 5, 2006, from Wiley Rein & Fielding, Schagrin Associates, and Stewart and Stewart.

Issued: September 26, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-16230 Filed 10-2-06; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0235]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Bulletproof Vest Partnership.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 4, 2006. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Pressley at 202-353-8643 or 1-866-859-2687, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate 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) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Revision of currently approved collection.

(2) *The title of the form/collection:* Bulletproof Vest Partnership.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local, or Tribal Governments. Other: None. Abstract: The Bureau of Justice Assistance (BJA) collects this information as part of the application for federal assistance process under the Bulletproof Vest Partnership (BVP) Program. The purpose of this program is to help protect the lives of law enforcement officers by helping states and units of local and tribal governments equip their officers with armor vests. An applicant may request funds to help purchase one vest per officer per fiscal year. Federal payment covers up to 50 percent of each jurisdiction's total costs. BJA uses the information collected to review, approve, and make awards to jurisdictions in accordance with programmatic and statutory requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 5,000 respondents who will respond approximately once per year, for a total of 5,000 responses. Each response will require approximately 1 hour to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 5,000 hours: 5,000 × 60 minutes per application = 300,000 minutes / by 60 minutes per hour = 5,000 hours.

If additional information is required, please contact, Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 27, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-16269 Filed 10-2-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Issuance of Insurance Policy (CM-921). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 4, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, E-mail bell.hazel@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* Section 423 of the Black Lung Benefits Act, as amended, requires that a responsible coal mine operator be insured and outlines the items each contract of insurance must contain. It also enumerates the civil penalties to which a responsible coal mine operator is subject, should these procedures not be followed. Further, 20 CFR part V, subpart C, 726.208-213 requires that each insurance carrier shall report to the Division of Coal Mine

Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to responsible operators. It states that this report will be made in such a manner and on such a form as DCMWC may require. The CM-921 is the form completed by the insurance carrier and forwarded to DCMWC for review. It is also required that if a policy is issued or renewed for more than one operator, a separate report for each operator shall be submitted. This information collection is currently approved for use through March 31, 2007.

II. *Review Focus*: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions*: The Department of Labor seeks approval for the extension of this information collection in order to identify operators who have secured insurance for payment of black lung benefits as required by the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Issuance of Insurance Policy.

OMB Number: 1215-0059.

Agency Number: CM-921.

Affected Public: Business or other for profit; Federal Government and State, Local or Tribal Government.

Total Respondents: 60.

Total Responses: 4,000.

Time per Response: 10 minutes.

Frequency: Annually.

Estimated Total Burden Hours: 667.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$1,880.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of

Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 28, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6-16277 Filed 10-2-06; 8:45 am]

BILLING CODE 4510-CK-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification

The following party has filed a petition to modify the application of an existing safety standard under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

Monterey Coal Company

[Docket No. M-2006-066-C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (Weekly examination) to its No. 1 Mine (MSHA I.D. No. 11-00726) located in Macoupin County, Illinois. The petitioner requests a modification of the existing standard to allow evaluation points to be used to examine inaccessible areas of the air courses in the same proximate location where the ventilating air enters and exits the inaccessible areas. The petitioner proposes to install an automatic sensing system at the exit points. The petitioner states that: (1) The inaccessible areas of the affected air course have numerous falls up to 50 feet high; (2) rehabilitation of an entry or removal of stoppings to make parallel entries common will be hazardous to miners due to unstable roof conditions; and (3) use of evaluation points and automatic sensors to examine these areas will provide a safe method of examination in the air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to Standards-Petitions@dol.gov. Include "petitions for modification" in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include "petitions for modification" on the subject line of the

fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before November 2, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 27th day of September 2006.

Cherie A. Hutchison,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6-16308 Filed 10-2-06; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

1. Jim Walter Resources, Inc.

[Docket No. M-2006-062-C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1711-1 (Sealing of shaft openings) to its No. 4 Mine (MSHA I.D. No. 01-01247), No. 5 Mine (MSHA I.D. No. 01-01322), and No. 7 Mine (MSHA I.D. No. 01-01401) all located in Tuscaloosa County, Alabama. The petitioner requests a modification of the existing standard to eliminate the requirement to cap shafts with vent pipes. The petitioner states that in previous experiences of equipping caps with vent pipes, in some instances, methane was believed to have existed within the explosive range immediately beneath the cap and oxygen was present in sufficient quantities to support an ignition or an explosion. The petitioner states that to equip caps with vent pipes will be more detrimental to miners' safety and health than the current proposal. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Jim Walter Resources, Inc.

[Docket No. M-2006-063-C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (Weekly examination) to its No. 7 Mine (MSHA I.D. No. 01-01401) located in Tuscaloosa County, Alabama. The petitioner requests a modification of the existing standard to eliminate the requirement to inspect each intake air course in the Western and Eastern areas of the No. 7 Mine. The petitioner states that the affected areas of the mine have fallen into disrepair and it is extremely burdensome and dangerous to rehabilitate each segment of the area because to travel either segment will result in a diminution of safety and health to the miners. The petitioner further states that the fresh air traveling through each segment of the area continues to be necessary to adequately ventilate active workings by diluting and carrying away large quantities of methane and coal dust where miners are working underground. The petitioner proposes to monitor the northern and southern ends of each segment of the mine on a weekly basis to measure air quantity or quality conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and sealing of the area would reduce ventilation which will result in a diminution of safety to miners.

3. Bridger Coal Company

[Docket No. M-2006-064-C]

Bridger Coal Company, P.O. Box 68, Point of Rocks, Wyoming 82942 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Bridger Underground Mine (MSHA I.D. No. 48-01646) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of non-permissible low-voltage or battery-powered, electronic testing and diagnostic equipment, in or inby the last open crosscut. The petitioner proposes to use the following equipment within 150 feet of pillar workings: Laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and

other testing and diagnostic equipment if approved in advance by the District Manager. The Petitioner states that due to the size, complexity, and location of the equipment being tested and diagnosed, it is nearly impossible and potentially unsafe to move the equipment at least 150 feet outby the pillar line once the equipment has broken down. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method would provide at least the same measure of protection as the existing standard. The petitioner further states that use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut would be used with designated restrictions which would at all times guarantee no less than the same level of protection as the standard.

4. Bridger Coal Company

[Docket No. M-2006-065-C]

Bridger Coal Company, P.O. Box 68, Point of Rocks, Wyoming 82942 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Bridger Underground Mine (MSHA I.D. No. 48-01646) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit use of low-voltage or battery-powered non-permissible, electronic testing, diagnostic equipment, in or inby the last open crosscut. The petitioner proposes to use the following equipment within 150 feet of pillar workings: Laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and other testing and diagnostic equipment if approved in advance by the District Manager. The petitioner states that application of the existing standard will result in a diminution of safety to the miners because due to the size, complexity, and location of the equipment being tested and diagnosed, it is nearly impossible and potentially unsafe to move the equipment at least 150 feet outby the pillar line once the equipment has broken down. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as

the existing standard. The petitioner further states that use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut would be used with designated restrictions which would at all times guarantee no less than the same level of protection as the standard.

5. Mosaic Potash Carlsbad, Inc.

[Docket No. M-2006-006-M]

Mosaic Potash Carlsbad, Inc., P.O. Box 71, 1361 Potash Mines Road, Carlsbad, New Mexico 88221-0071 has filed a petition to modify the application of 30 CFR 57.15031 (Location of self-rescue devices) to its Underground Potash Mine (MSHA I.D. No. 29-00802) located in Eddy County, New Mexico. The petitioner proposes to use 10 minute (Ocenco M-20 or equivalent) on the miner's belt in concert with a 60 minute Self-Contained Self-Rescuer (SCSR) located nearby in their Mosaic Underground Potash Mine. The petitioner states that the miner will wear the M-20 units (MSHA rated at 10 minutes) on their person and a 60 minute unit (the SR-100, EBA 6.5 or equivalent MSHA rated for 60 minutes) on their vehicles or equipment. These units will be located within 300 to 500 feet or 5 minutes maximum of the employee. The combination of devices will be made available to all employees working underground and maintained in good condition. The petitioner further states that: (1) This proposal will satisfy the State Mining Act while enabling the miners to wear an ergonomically suitable SCSR on their belt; (2) the alternative to the smaller M-20 type are bulky and heavy units that will expose the miners to additional risk associated with a large and heavy unit hanging off their belt; and (3) the current MSA W-65 filter self rescuer (Approval No. TC-14G-82) weighs 2.2 pounds, and the smallest SCSR is the SR-100 which weighs 6 pounds and is approximately 2.5 larger than the W-65 filter and is awkward to wear. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Mosaic Potash Carlsbad, Inc.

[Docket No. M-2006-007-M]

Mosaic Potash Carlsbad, Inc., P.O. Box 71, 1361 Potash Mines Road, Carlsbad, New Mexico 88221-0071 has filed a petition to modify the application of 30 CFR 57.15030 (Provision and maintenance of self-rescue devices) to its Mosaic Underground Potash Mine (MSHA I.D. No. 29-00802) located in Eddy County,

New Mexico. The petitioner states that the miner will wear the M-20 units (MSHA rated at 10 minutes) on their person and a 60 minute unit (the SR-100, EBA 6.5 or equivalent MSHA rated for 60 minutes) on their vehicles or equipment. These units will be located within 300 to 500 feet or 5 minutes maximum of the employee. The combination of devices will be made available to all employees working underground and maintained in good condition. The petitioner further states that: (1) This proposal will satisfy the State Mining Act while enabling the miners to wear an ergonomically suitable SCSR on their belt; (2) the alternative to the smaller M-20 type are bulky and heavy units that will expose the miners to additional risk associated with a large and heavy unit hanging off their belt; and (3) the current MSA W-65 filter self rescuer (Approval No. TC-14G-82) weighs 2.2 pounds, and the smallest SCSR is the SR-100 which weighs 6 pounds and is approximately 2.5 larger than the W-65 filter and is awkward to wear. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Intrepid Potash NM LLC

[Docket No. M-2006-008-M]

Intrepid Potash NM LLC, P.O. Box 101, Carlsbad, New Mexico 88221-0101 has filed a petition to modify the application of 30 CFR 57.15031 (Location of self-rescue devices) to its Intrepid Underground Potash Mine (MSHA I.D. No. 29-00175 (West)) located in Eddy County, New Mexico. The petitioner proposes to use 10-Minute (Oeanco M-20 or equivalent) and 60-Minute Self-Contained Self-Rescuers (SCSRs) in their Underground Potash Mine outside of Carlsbad, New Mexico. The petitioner states that the miner will wear the M-20 units (MSHA rated at 10 minutes) on their person and a 60-Minute unit (the SR-100, EBA 6.5 or equivalent MSHA rated for 60 minutes) on their vehicles or equipment. The units will be located within 200 to 500 feet or 5 minutes maximum of the employee. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Intrepid Potash NM LLC

[Docket No. M-2006-009-M]

Intrepid Potash NM LLC, P.O. Box 101, Carlsbad, New Mexico 88221-0101 has filed a petition to modify the application of 30 CFR 57.15031

(Location of self-rescue devices) to its Intrepid Underground Potash Mine (MSHA I.D. No. 29-00170 (East)) located in Lea County, New Mexico. The petitioner proposes to use 10-Minute (Oeanco M-20 or equivalent) and 60-Minute Self-Contained Self-Rescuers (SCSRs) in their Underground Potash Mine outside of Carlsbad, New Mexico. The petitioner states that the miner will wear the M-20 units (MSHA rated at 10 minutes) on their person and a 60-Minute unit (the SR-100, EBA 6.5 or equivalent MSHA rated for 60 minutes) on their vehicles or equipment. The units will be located within 200 to 500 feet or 5 minutes maximum of the employee. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail to Standards-Petitions@dol.gov. Include "petitions for modification" in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include "petitions for modification" on the subject line of the fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before November 2, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 27th day of September 2006.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6-16309 Filed 10-2-06; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel (application review) to the National Council on the Arts will be held by teleconference at the Nancy

Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 from 11 a.m. to 12 p.m. (EDT) on October 16, 2006. This meeting will be closed.

Closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 27, 2006, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: September 27, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6-16233 Filed 10-2-06; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time: November 2, 2006; 9 a.m.-5 p.m.; November 3, 2006; 9 a.m.-3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Joanne Tornow, Senior Advisor for Strategic Planning, Policy and Analysis, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Tel No.: (703) 292-8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Joint session with the Education and Human Resources Directorate Planning and Issues Discussion:

- BIO Status and FY 078 Budget
- NSF Strategic Plan
- NEON Update
- Committee of Visitors Reports

Dated: September 28, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06-8455 Filed 10-2-06; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: October 19, 2006; 7:45 a.m.–9 p.m. October 20, 2006; 8 a.m.–4 p.m.

Place: Harvard University, Cambridge, MA.

Type of Meeting: Part-Open.

Contact Person: Dr. Maija M. Kukla, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292-4940.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Materials Research Science and Engineering Center.

Agenda

Thursday, October 19, 2006

7:45 a.m.–8:45 a.m. Closed—Briefing of Site Visit Panel.

8:45 a.m.–12 p.m. Open—Welcome (institutional representatives, etc.).

12 p.m.–1 p.m. Closed.

1 p.m.–4:45 p.m. Open—Technical research presentations and seed projects.

4:45 p.m.–6:15 p.m. Closed—Executive Session for Site Visit Team.

6:15 p.m.–7 p.m. Open—Poster Session (limited number of posters).

7 p.m.–9 p.m. Closed—Meeting of Site Panel.

Friday, October 20, 2006

8 a.m.–9 a.m. Closed—Executive session, Director's Response to Feedback.

9 a.m.–10:45 a.m. Open—Industrial Outreach and Other Collaborations (Weitz).

10:45 a.m.–4 p.m. Closed—Discussion with MRSEC Executive Committee.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06-8456 Filed 10-2-06; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date/Time: November 1, 2006 12 Noon–6 p.m.; November 2, 2006 8 a.m.–6p.m.; November 3, 2006 8 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Briefing to new members about NSF and Directorate. Update on current status of Directorate. Meeting with Education and Human Resources Advisory Committee. Meeting of MPSAC with Divisions within MPS Directorate. Report of the Senior Review of the Division of Astronomical Sciences. Discussion of MPS Long-term Planning Activities.

Summary Minutes: May be obtained from the contact person listed above.

Dated: September 28, 2006.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 06-8458 Filed 10-2-06; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: October 26, 2006, 8 a.m. to 5 p.m. October 27, 2006, 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235.

Type of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8030.

Minutes: May be obtained from the contact person list above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities of the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Staff presentations on program updates; discussions on International Polar Year; discussions on resupply.

Dated: September 28, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06-8457 Filed 10-2-06; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

Entergy Nuclear Operations, Inc.; James A. Fitzpatrick Nuclear Power Plant; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (ENO or the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (JAF). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Oswego County, New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.48, requires that nuclear power plants that were licensed before January 1, 1979, of which JAF is one, must satisfy the requirements of 10 CFR Part 50, Appendix R, Section III.G. Subsection III.G.2 addresses fire protection features for ensuring that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. Subsection III.G.2.c provides use of a 1-hour fire barrier as one means for complying with this fire protection requirement. ENO proposes that the absence and/or control of ignition sources, the adequacy of detection and suppression systems, and the capability of the existing Hemyc fire wrap in this fire area, satisfy the underlying intent of 10 CFR 50, Appendix R, Subsection III.G.2.c.

In summary, by letter dated July 27, 2005, Agencywide Documents Access and Management System (ADAMS) accession number ML052210382, as supplemented on May 17, 2006,

ADAMS accession number ML061530108, ENO submitted an exemption request to the NRC for relief from the requirements of Subsection III.G.2.c of 10 CFR 50, Appendix R, specifically, from the 1-hour rating requirement for the fire wrap in the West Cable Tunnel at JAF.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. One of these special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that the existing fire protection features in and accessible for the specific fire zone referenced for JAF meet the underlying purpose of 10 CFR 50, Appendix R, Subsection III.G.2.c. The following technical evaluation provides the basis for this conclusion.

3.1 Background

On May 29, 2001, the NRC granted the licensee an exemption from the requirement of Appendix R, Section III.G.2.c, applicable to the West Cable Tunnel at JAF. Specifically, although III.G.2.c provides the use of a 1-hour rated fire barrier as a means of ensuring adequate fire protection for redundant safe shutdown trains in this fire zone, the licensee identified that the fire barrier material intended to be rated for 1 hour, in fact demonstrated functionality for 52 minutes during testing in accordance with American Society for Testing and Materials E-119 test criteria. The NRC granted the exemption based on supporting evidence that a 30-minute rated fire barrier, in combination with existing fire protection features and the absence of significant combustibles and ignition sources in the area, provided an equivalent level of protection and satisfied the underlying purpose of the rule. More than one type of fire barrier is used in this fire area, however no specific fire barrier type was identified in the exemption itself.

In 2005, the NRC identified Hemyc fire barriers as potentially nonconforming fire barriers relied on for

compliance with fire protection regulations for 1-hour or 3-hour rated protection at some licensed nuclear power plants. On April 1, 2005, the NRC staff issued Information Notice 2005-07, "Results of HEMYC Electrical Raceway Fire Barrier System Full Scale Fire Testing" (ML050890089), identifying the concern. On April 10, 2006, the NRC staff issued Generic Letter 2006-03, "Potentially Nonconforming Hemyc and MT Fire Barrier Configurations" (ML053620142), asking that licensees determine whether this type of fire barrier is relied on for compliance and, if so, how compliance is maintained given the potential for nonconformance observed during recent NRC Hemyc testing (ML051190026).

ENO identified use of Hemyc in the West Cable Tunnel and seeks an exemption similar to that granted in May 2001 (specified in the current submittal as applicable to Kaowool FP-60 fire barrier wrap), on the basis that the existing Hemyc fire barrier in this area is expected to provide at least 30 minutes of protection for the redundant safe shutdown trains located there and, in combination with existing fire protection features and the absence of significant combustibles and ignition sources in the area, provides an equivalent level of protection to satisfy the underlying purpose of the rule.

3.2 Existing Fire Protection Features

Fire Area 1C at JAF contains the West Cable Tunnel (Fire Zone [FZ] CT-1). FZ CT-1 is protected from adjoining fire zones and other plant areas by 3-hour fire barriers. It has a total area of 13,400 square feet and contains Division I (Train A) cables for systems relied on for post-fire safe shutdown. In the event of a fire in this zone, the High Pressure Coolant Injection System and Residual Heat Removal System "B" Train are relied on for hot shutdown of the plant, as well as the Alternate Shutdown Cooling System "B" Train which is relied on for cold shutdown.

These systems are supported by the "B" Train direct current (dc) power supply and associated heating, ventilating, and air conditioning equipment. Therefore, the power cable for the air handling unit which provides proper ventilation for the "B" Train dc power supply (or Battery Room "B"), is also relied on for safe shutdown and is the subject of this review.

Hemyc is used to protect approximately 40 feet of the 5-inch conduit containing this power cable, for compliance with safe shutdown requirements. Within the 40 feet of Hemyc-wrapped conduit are 3.75 feet of 5-inch flex-conduit, and an inline pull

box approximately 12 inches by 18 inches by 8 inches. All structural supports are seismically-qualified and completely wrapped in Hemyc except for a portion of the base plates, which are bolted to a concrete ceiling.

The licensee describes the Hemyc material used in this application as consisting of an inner and outer covering of aluminized Siltemp[®].¹ The licensee states that aluminized Siltemp[®] can be expected to have better heat resistive properties than non-aluminized Siltemp[®] or Refrasil[®], since the reflective coating serves to reflect more radiant energy than the standard Siltemp[®] or Refrasil[®].

The licensee identifies the in-situ combustible load for this zone as cable and fiberglass. Cable is described as making up over 90 percent of the load, with original cables ordered before Institute of Electrical and Electronics Engineers (IEEE) Standard 383-1974 was issued. However, the licensee states that the flame retardant capability of the installed cable was analyzed and determined to be similar to IEEE 383-1974 rated cable. The fiberglass in this zone is comprised of a water tank (shower waste tank), piping, and ladders. The tank is approximately 21 feet from the Hemyc wrap, and the ladders are stored over 50 feet from the Hemyc wrap. Only the cables have been identified as significant in-situ ignition sources.

Detection in FZ CT-1 is described by the licensee as an automatic area-wide early warning smoke detection system monitored in the Main Control Room. Although the detection system was designed and installed in accordance with National Fire Protection Standards 72D and 72E, 1979 and 1978 Editions, respectively, the installed system does not meet the code of record in some cases. However, the deviations from the code were evaluated by the licensee and determined not to adversely impact safety performance.

Automatic suppression for this zone is described as consisting of area-wide sprinklers and in-tray water spray. Manual suppression is also available within FZ CT-1 and in nearby areas in the form of fire extinguishers and hose stations.

3.3 Evaluation

Hemyc fire barrier is used to wrap a cable in FZ CT-1 that supplies power to the air handling unit that supports redundant safe shutdown equipment

¹ Siltemp[®] and Refrasil[®] are heat-resistant fabrics used as an outer covering for Hemyc. Both were tested by the NRC and determined to be essentially equivalent (ADAMS Accession No. ML 051190055). Refrasil[®] was used during recent NRC Hemyc tests.

described in Section 3.2 above. Although this Hemyc was installed with the intention of providing 1 hour of rated fire protection in accordance with Appendix R, Subsection III.G.2.c, the licensee has evaluated the Hemyc configuration for this power cable and requests an exemption from the 1 hour requirement based on the expectation that the configuration will provide at least 30 minutes of protection.

Five-inch conduits were not tested in recent Hemyc tests. However, because the mass of the larger sized conduits used in this application at JAF should be more resistant to thermal absorption than that of the 4-inch conduits tested, and because this expectation was confirmed during NRC testing where the smaller sized conduits consistently failed in less time than the larger sized conduits, the NRC staff expects the results of the 4-inch conduit tests to be representative of a 5-inch configuration with some conservatism. The NRC testing was described in NRC Information Notice 2005-07 and further documented in the Sandia National Laboratories test reports (ML051190026).

In the NRC tests (described in Section 3.1 above), the 4-inch conduit was tested with and without cable placed inside. With cable inside, indication of thermal failure for the 4-inch conduit was reached at 43 minutes. Therefore, for the rigid 5-inch configuration at JAF, the NRC staff finds that the test results for the 4-inch conduit and the additional time margin for thermal failure to occur due to the larger mass of the 5-inch conduit provides reasonable assurance that the Hemyc would provide 30 minutes of protection.

The 5-inch cable configuration at JAF also includes a section of flex-conduit and an in-line pull box. Flex-conduit was not included in the recent Hemyc tests. However, the licensee provided additional information regarding this application of flex-conduit. The size and geometry of the flex-conduit is described as identical to that of the rigid conduit. However, the weight per unit length of the flex-conduit (4.7 pounds per foot (lbs/ft)) was determined to be best represented by the empty 2.5-inch conduit tested (5.1 lbs/ft). Because the initiation of thermal failure for the 2.5-inch empty conduit was indicated at 41 minutes during the NRC tests, the NRC staff finds that the flex-conduit configuration at JAF would be expected to provide slightly less than 41 minutes of protection. Because initiation of thermal failure for the 1-inch filled conduit tested (2.52 lbs/ft) was indicated at 34 minutes during the NRC tests, the NRC staff finds that the flex-

conduit configuration at JAF would be expected to provide 30 minutes of protection, with an estimated margin of approximately 10 minutes (approximately 33 percent margin).

The in-line pull box included in the Hemyc configuration is approximately 12-inches by 18-inches by 8-inches, and is positioned in-line with the 5-inch rigid conduit. A larger junction box of the same shape as the JAF pull box was included in the recent Hemyc tests, tested both with and without bands. Therefore, the NRC test results for the junction box should provide a reasonable representation of the expected performance of the JAF pull box configuration.

In the NRC tests the Hemyc material was wrapped around the junction box (18-inches by 24-inches by 8-inches) using two Hemyc mats, each covering 3 sides of the box and stitched together. In the test with bands, the banding kept both mats in place even though the stitching failed. The junction box was banded with 2 to 3 bands around each of the six sides. When tested with the bands, initiation of thermal failure within the junction box was indicated at 31 minutes following the onset of the fire. In the test without the bands, initiation of thermal failure within the junction box was indicated at 15 minutes following the onset of the fire.

At JAF, the Hemyc material is wrapped around the pull box using one Hemyc mat covering four sides, with a seam stitched along the length of one side. The remaining two ends are protected by Hemyc end pieces stitched in place. Banding is used to keep the four sides secured in place; however, the banding does not secure the end pieces. The licensee describes the end pieces as partially secured in place with the Hemyc that is wrapped around the in-line conduit. However, the NRC staff is concerned that without banding of the end pieces similar to banding of all sides during NRC tests, failed stitching would result in thermal failure at the unbanded end pieces similarly to that demonstrated during NRC testing of the unbanded junction box.

In the licensee's May 17, 2006, response (ADAMS Accession No. ML061530108) to the NRC staff's request for additional information (ADAMS Accession No. ML060860014) regarding the expected performance of the pull box during a severe fire, the licensee stated that the degree of thermal shrink observed during NRC testing using Refrasil[®] was more substantial than that observed during subsequent industry testing using Siltemp[®], which is the material used in the JAF Hemyc configuration. However,

this reasoning is not consistent with the NRC staff's interpretation of the results of the tests. The NRC staff observed both the NRC and industry tests and analyzed the data from both tests. The NRC staff observed that the improvements made to the industry test configuration (including increased collar widths, double wrapped elbows, and larger overlap area at the joints) may have resulted in smaller gaps at the joints; however, the resulting thermal failures were consistent (and sometimes more severe) than those observed during the NRC tests. In addition, these improvements have not been incorporated into the JAF pull box configuration. Therefore, the NRC staff finds no basis to conclude improved performance at the pull box end piece stitching.

Based on the results of the NRC tests, it appears that the four banded sides of the pull box would remain protected for approximately 31 minutes. However, the protection provided by the two ends of the pull box is uncertain. Banding is not used to secure the end pieces of the JAF pull box as it was during the NRC test of the junction box. The adjoining Hemyc from the in-line conduit may provide some reinforcement, but that potential additional protection is uncertain. Also, the apparent pinched stitching could provide additional Hemyc material that may improve performance, but again with uncertain quantification of the potential additional protection. Therefore, based on the results of the NRC tests and the absence of banding at the two ends of the JAF pull box, it appears that the conduit within the pull box would remain protected for 15 to 31 minutes from the onset of a fire. With additional margin added to the NRC test results to provide reasonable assurance of protection of the cables inside, the NRC staff finds that 30 minutes of protection cannot be reasonably expected at the pull box.

Regarding the licensee's expectation that aluminized Siltemp[®] will improve the heat resistive properties of the JAF Hemyc configuration, it is not clear to the NRC staff that this expectation has been quantified or analyzed. In response to the NRC staff's request for additional information asking for supporting evidence of this expectation, the licensee referred to the manufacturer's data. Although this reference confirmed the statement that, "(a)luminized Siltemp[®] provides thermal reflectivity," it also provided a table of Siltemp[®] products, including aluminized Siltemp[®] as an entry with a footnote that states, "Coatings will lose properties as temperature increases." In

addition, the licensee stated that “(b)ased on the better thermal reflectivity of the aluminized Siltemp®, less heat transfer will occur into the Hemyc wrap because it is reflected away.” However, the licensee has provided no quantification for any potential reduction in radiant heat transfer. In addition, the stratification of hot gases would likely result in the formation of a black body in the vicinity of the Hemyc configuration (near the ceiling) which would impede radiant heat transfer. Based on the information provided, the NRC staff is unable to confirm that the contribution of thermal reflectivity, if any, would be effective enough to result in a measurable improvement in Hemyc performance. Therefore, the NRC staff finds no basis for the expectation of any marked difference in radiant energy reflection between aluminized and standard Siltemp® or Refrasil®.

All structural supports used in this application are seismically-qualified and completely wrapped in Hemyc except for a portion of the base plates, which are bolted to a concrete ceiling. In response to the NRC staff’s request for additional information, the licensee provided details on the configuration of the structural support. Although the area of the exposed portions of the base plates requested was not provided, the NRC staff is of the opinion that the concrete ceiling should act as a heat sink for a fire in this area, minimizing the heat transfer through the supports. Based on the fully-wrapped structural support system, the NRC staff finds the heat transfer through the exposed based plates or supports would be insufficient to adversely impact the functionality of the associated protected cable.

Combustibles and Ignition Sources

The only significant in-situ combustible and ignition source for this zone is cable. Although these cables were installed before IEEE Standard 383–1974 was issued, they have been analyzed to determine the flame retardant capability and shown to be equivalent to IEEE 383–1974 rated cable. The NRC staff has reviewed the licensee’s evaluation of the flame retardant characteristics of the cable installed and finds acceptable the licensee’s determination that a fire in this area will propagate slowly.

Administrative procedures control transient combustibles, ignition sources, and hot work in this zone. Procedures are being revised to incorporate restrictions on hot work in the proximity of the Hemyc wrap under review, similar to that done for the Kaowool FP–60 fire barrier wrap.

Detection

An automatic area-wide smoke detection system is installed in this fire area. If actuated, the detector will initiate an alarm in the Main Control Room. Because the installed detection system does not meet the code of record in some cases, the deviations from the code were evaluated by the NRC staff and found to potentially affect the availability of the detection system. Therefore, the NRC staff reviewed the licensee’s program to ensure availability of the detection systems in the event detection is unavailable in FZ CT–1. The NRC staff found that adequate administrative controls are in effect to apply compensatory measures if the system is not available and adequate controls maintain the effectiveness of the detection system. Therefore, the NRC staff concludes that the detection system code deviations do not adversely impact safety performance in this zone.

Suppression

Automatic suppression for this zone is supplied by area-wide sprinklers and an in-tray water spray system. Manual suppression is also available through hose stations and fire extinguishers located within the fire zone and in nearby areas. In the event that automatic or manual suppression systems are out of service, compensatory measures have been established to protect safe shutdown equipment in FZ CT–1.

Risk Analysis

The licensee reviewed the JAF fire probabilistic risk analysis database for the air handling unit and the power cable supplying it, and found that neither are risk significant. If the power cable was damaged by a fire, and therefore ventilation was lost to the B battery room, the licensee stated it would take 2 hours for the B battery room to heat up to the point it would exceed the manufacturer’s qualification of the battery. This allows time to fight the fire and take corrective actions. Assuming the loss of all the equipment in FZ CT–1, the licensee estimated the total core damage frequency for a fire in FZ CT–1 as $7.21E-7$ /year, based on the JAF Individual Plant Examination for External Events.

Defense-in-Depth

Part 50 of 10 CFR, Appendix R, section II, states that a licensee’s fire protection program extends the concept of defense-in-depth to fire protection with the following objectives:

- To prevent fires from starting,
- To detect rapidly, control, and extinguish promptly those fires that do occur, and

- To provide protection for structures, systems and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

Regulatory Guide 1.174 also identifies factors to be considered when evaluating defense-in-depth for a risk-informed change.

The NRC staff has evaluated the elements of defense-in-depth used for fire protection at JAF, applicable to the fire zone under review. Although the NRC staff finds inadequate basis to support the licensee’s expectation that the existing Hemyc configuration in FZ CT–1 will provide 30 minutes of protection for the power cable to the air handling unit relied on for post-fire safe shutdown in the event of a worst-case fire in FZ CT–1, the NRC staff is reasonably assured that the absence of significant combustible loading and ignition sources in the area of the Hemyc configuration and low risk significance associated with the safe shutdown equipment protected, preclude the need for withstanding a fire of the magnitude tested in recent NRC tests. In particular, although the Hemyc configuration applied to the JAF pull box may not be optimal, the risk significance is low. In addition, the existing fire protection capabilities for full area detection, full area suppression, and in-tray suppression, provide reasonable assurance for prevention of an unmitigated fire. Therefore, based on the NRC staff’s analysis, defense-in-depth is maintained.

Special Circumstances

One of the special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Subsection III.G.2.c of 10 CFR 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire, and allows the use of a 1-hour fire barrier with fire detectors and an automatic fire suppression system as one means for complying with this fire protection requirement. For FZ CT–1, based on the presence of area-wide smoke detection; the presence of automatic area and in-tray fire suppression and manual fire suppression; fire barrier protection at the boundaries of the fire zone; the existing Hemyc configuration in the fire zone; implementation of transient combustibles controls including proposed revisions for hot work in the

vicinity of the Hemyc configuration; and the absence of significant combustible loading and ignition sources, the NRC staff finds that a 1-hour rating for the fire barrier protection in this zone is not necessary to ensure the availability of a redundant train necessary to achieve and maintain safe shutdown of the plant in the event of a fire in FZ CT-1. Based upon consideration of the information in the licensee's Fire Hazards Analysis; administrative controls for transient combustibles and ignition sources; responses to NRC staff requests for additional information; previously-granted exemptions for this fire zone; and the considerations noted above, the NRC staff concludes that this exemption meets the underlying purpose of the rule. Therefore, operating in the proposed manner meets the underlying purpose of Subsection III.G.2.c to 10 CFR 50, Appendix R, and special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50 exist.

Authorized by Law

This exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption is permissible under the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of Subsection III.G.2.c of 10 CFR 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. Based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources, special circumstances are present such that application of this rule is not necessary. No new accident precursors are created by allowing use of a fire barrier expected to provide less than 1 hour of fire protection and the probability of postulated accidents is not increased. Similarly, the consequences of postulated accidents are not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources. This change to the plant requirements for the specific configuration in this fire zone has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Specifically, special circumstances are present in that the application of the regulation is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants ENO an exemption from the requirement of a 1-hour rated fire barrier (fire wrap) in Section III.G.2.c of 10 CFR Part 50, Appendix R, for the West Cable Tunnel at JAF provided that the proposed revisions to the procedures for hot work in the vicinity of the Hemyc configuration are implemented. The granting of this exemption is based on the implementation of revised administrative controls for hot work in the vicinity of the Hemyc configuration in FZ CT-1 (addressed in Section 3.3 above), the existing or upgraded fire barrier protection features in FZ CT-1, the maintenance of existing automatic detection and suppression features in FZ CT-1, and the availability of manual fire fighting and associated fire fighting equipment.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 54100).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-16262 Filed 10-2-06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-259]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Unit 1; Exemption

1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License No. DPR-33, which authorizes operation of the Browns Ferry Nuclear Plant, Unit 1 (BFN-1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The BFN-1 facility consists of a boiling water reactor (BWR) located in Limestone County, Alabama.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), 50.54(o), requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J, Option B, Section III.A requires that the overall integrated leak rate must not exceed the allowable leakage with margin, as specified in the Technical Specifications (TSs). The overall integrated leak rate, as specified in the 10 CFR part 50, Appendix J definitions, includes the contribution from main steam isolation valve (MSIV) leakage. By letter dated July 9, 2004, the licensee requested exemption from Option B, Section III.A, requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement.

Option B, Section III.B of 10 CFR part 50, Appendix J, requires that the sum of the leakage rates of all Type B and Type C local leak rate tests be less than the performance criterion with margin, as specified in the TSs. The licensee also requests exemption from this requirement, to permit exclusion of the MSIV contribution to the sum of the Type B and Type C tests.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1)

the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." In addition, § 50.12(a)(2)(iii) of 10 CFR states that special circumstances are present when "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated."

Testing in accordance with 10 CFR part 50, Appendix J, ensures that primary containment leakage following a design basis loss-of-coolant accident will be within the allowable leakage limits specified in the TSs and assumed in the safety analyses for determining radiological consequences. For BFN-1, the containment integrated leakage rate test currently includes leakage through closed MSIVs. However, the MSIV leakage effluent has a different pathway to the environment compared to other containment penetrations. It is not directed into the secondary containment and filtered through the standby gas treatment system as is other containment leakage. Instead, the MSIV leakage is directed through the main steam drain piping into the condenser and is released to the environment as an unfiltered ground level effluent. The licensee analyzed the MSIV leakage pathway for the increased leakage (from less than or equal to 11.5 standard cubic feet per hour (scfh) per valve to less than or equal to 100 scfh per valve, with combined leakage for all four main steam lines less than or equal to 150 scfh), and the containment leakage pathway separately in a dose consequences analysis. The calculated radiological consequences of the combined leakages were found to be within the criteria of 10 CFR part 100 and 10 CFR part 50, Appendix A, General Design Criterion 19. The NRC staff reviewed the licensee's analyses and found them acceptable, as described in the safety evaluation associated with Amendment No. 251, dated September 27, 2004. In approving Amendment No. 251, the NRC staff added license condition 2.C(15):

The licensee is required to confirm that the conclusions made in TVA's letter dated

September 17, 2004 [Agencywide Documents Access and Management System Accession No. ML042730342], for the turbine building remain acceptable using seismic demand accelerations based on dynamic seismic analysis prior to the restart of Unit 1.

In approving these exemptions, the NRC staff notes that the licensee must satisfy license condition 2.C(15).

By separating the MSIV leakage acceptance criteria from the overall integrated leak rate test criteria, and from the Type B and C leakage sum limitation, the BFN-1 containment leakage testing program will be made more consistent with the limiting assumptions used in the associated accident consequences analyses. It will also allow additional operational flexibility by, in effect, increasing the total containment leakage rate limit while remaining within the applicable dose consequence guidelines and requirements. The licensee's exemption request was submitted in conjunction with a proposed amendment to the TSs to increase the allowable leak rate for MSIVs, which is being evaluated by the NRC staff separately. The amendment associated with this exemption will revise TS Surveillance Requirement (SR) 3.6.1.3.10 to limit the maximum allowable MSIV leakage through each individual valve to 100 scfh and combined MSIV leakage to 150 scfh. The requested exemption from Appendix J requirements for MSIV leakage will allow BFN-1 to operate with the proposed TS increased allowable MSIV leakage rates with reduced radiological exposure to plant personnel for maintaining MSIV leakage limits. The licensee's exemption request and proposed changes to the TSs together would implement the recommendation of BWR Owners Group Topical Report NEDC-31858, "BWR Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems," which was approved by the NRC staff in a safety evaluation dated March 3, 1999. Therefore, the NRC staff finds the proposed exemptions from Appendix J to separate MSIV leakage from other containment leakage to be acceptable.

Authorized by Law

This proposed exemptions would permit exclusion of MSIV leakage from the overall integrated leak rate test measurement and permit exclusion of the MSIV contribution to the sum of the Type B and Type C local leak rate tests. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, Appendix J. The NRC staff has determined that granting the licensee's

proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of Appendix J is to assure that containment leak tight integrity is maintained (a) as tight as reasonably achievable, and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents (DBAs). The proposed changes require the use of the main steam piping and the condenser to process MSIV leakage. This additional function does not compromise the reliability of these systems. They will continue to function as intended and not be subject to a failure of a different kind than previously considered. Since no new accident precursors are created by permitting the exclusion of MSIV leakage from the overall integrated leak rate test measurement and permitting the exclusion of the MSIV contribution to the sum of the Type B and Type C local leak rate tests, the probability of postulated accidents is not increased. The allowable leak rate specified for the MSIVs is used to quantify a maximum amount of leakage assumed to bypass containment. Sufficient margin relative to the regulatory limits is maintained even when conservative assumptions and methods are utilized. Also, the proposed change does not involve changes to the structures, systems, or components which would affect the probability of an accident previously evaluated in the BFN-1 updated final safety analysis report. Thus, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemptions would permit exclusion of MSIV leakage from the overall integrated leak rate test measurement and permit exclusion of the MSIV contribution to the sum of the Type B and Type C local leak rate tests. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security are not impacted by these exemptions.

Special Circumstances

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule

or is not necessary to achieve the underlying purpose of the rule.” The NRC staff examined the licensee’s rationale to support the exemption request and concluded that it would meet the underlying purpose of Appendix J, Option B, Sections III.A and III.B. The underlying purpose of Appendix J is to assure that containment leak tight integrity is maintained (a) as tight as reasonably achievable, and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of DBAs. Including the MSIV leakage in the test acceptance criteria is not necessary to achieve the underlying purpose of the rule because MSIV leakage is not directed into the secondary containment. Also, TS SR 3.6.1.3.10 specifies a specific leak rate limit to assure operation of BFN-1 remains within the bounds of the DBA analysis. Therefore, the underlying purpose of the rule continues to be met.

In addition, § 50.12(a)(2)(iii) of 10 CFR states that special circumstances are present when “Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.” The licensee’s exemption request and proposed changes to the TSs together would implement the recommendation of Topical Report NEDC-31858. The special circumstances associated with MSIV leakage testing are fully described in the topical report. These circumstances include the monetary costs and personnel radiation exposure involved with maintaining MSIV leakage limits more restrictive than necessary to meet offsite dose criteria and control room habitability criteria. The exemption from Appendix J requirements for MSIV leakage rates is required so that BFN-1 can operate with the proposed TS increased allowable MSIV leakage rates. This results in reduced radiological exposure to plant personnel, greater MSIV reliability, and significant monetary benefit to TVA as a result of reduced plant outage durations.

Therefore, since the underlying purpose of 10 CFR part 50, Appendix J, is achieved and the circumstances described in NEDC-31858 are met, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(iii) for the granting of an exemption from 10 CFR part 50, Appendix J exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR

50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants TVA an exemption from the requirements of 10 CFR Part 50, Appendix J, Option B, Sections III.A and III.B with respect to MSIV leakage, for BFN-1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 33777).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of September 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Nuclear Management Company, LLC; Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.46, and Appendix K to 10 CFR Part 50 for Facility Operating License No. DPR-20, issued to Nuclear Management Company, LLC (the licensee), for operation of the Palisades Nuclear Plant (Palisades), located in VanBuren County, Michigan. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide an exemption from the requirements of: (1) 10 CFR 50.46, “Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,” which requires that the calculated emergency core cooling system (ECCS) performance for reactors with zircaloy or ZIRLO fuel cladding meet certain criteria, and (2) 10 CFR Part 50, Appendix K, “ECCS Evaluation Models,” which presumes the use of

zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated loss-of-coolant accident.

The proposed action would allow the licensee to use the M5 advanced alloy in lieu of zircaloy or ZIRLO for fuel rod cladding in fuel assemblies at Palisades.

The proposed action is in accordance with the licensee’s application dated October 4, 2005, as supplemented by letter dated June 14, 2006.

The Need for the Proposed Action

The Commission’s regulations in 10 CFR 50.46 and 10 CFR Part 50, Appendix K, require the demonstration of adequate ECCS performance for light-water reactors that contain fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. Each of these regulations, either implicitly or explicitly, assumes that either zircaloy or ZIRLO is used as the fuel rod cladding material.

In order to accommodate the high fuel-rod burnups that are necessary for modern fuel management and core designs, Framatome ANP developed the M5 advanced fuel rod cladding material. M5 is an alloy comprised primarily of zirconium (~99 percent) and niobium (~1 percent) that has demonstrated superior corrosion resistance and reduced irradiation-induced growth relative to both standard and low-tin zircaloy. However, since the chemical composition of the M5 advanced alloy differs from the specifications of either zircaloy or ZIRLO, use of the M5 advanced alloy falls outside of the strict interpretation of NRC regulations. Therefore, approval of this exemption request is needed to permit the use of the M5 advanced alloy as a fuel rod cladding material at Palisades.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that use of M5 clad fuel would not result in changes in the operations or configuration of the facility. There would be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological

environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Addendum to the Final Environmental Statement Related to Operation of the Palisades Nuclear Plant, dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on September 11, 2006, the staff consulted with the Michigan State official, Mary Ann Elzerman of the Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 4, 2005, as supplemented by letter dated June 14, 2006.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System

(ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 26th day of September 2006.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Plant Licensing Branch III-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-16260 Filed 10-2-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 24, 2006. A sample of agenda items to be discussed during the public sessions includes: (1) NARM Legislation Update; (2) Status of Specialty Board applications for NRC recognition; (3) Staff Actions for Authorized Medical Physicist and Radiation Safety Officer; (4) Interim Inventory and National Sealed Source Tracking; (5) Status of Medical Events; (6) NARM Guidance. To review the agenda, see <http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda/> or contact Mohammad Saba, by telephone at: (301) 415-7608, or via e-mail at: mss@nrc.gov.

Purpose: Discuss issues related to 10 CFR Part 35, Medical Use of Byproduct Material.

Date and Time for Closed Session Meeting: October 24, 2006, from 8 a.m. to 10:15 a.m. This session will be closed so that NRC staff can brief the ACMUI on information relating solely to internal personnel rules.

Dates and Times for Public Meetings: October 24, 2006, from 10:30 a.m. to 5 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2B3, 11545 Rockville Pike, Rockville, MD 20852-2738.

FOR FURTHER INFORMATION CONTACT: Mohammad S. Saba by telephone at: (301) 415-7608 or via e-mail at:

mss@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Mohammad S. Saba, U.S. Nuclear Regulatory Commission, Mail Stop T8F03, Washington DC 20555. Alternatively, an e-mail can be submitted to mss@nrc.gov. Submittals must be postmarked or e-mailed by October 17, 2006, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (<http://www.nrc.gov>) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738, telephone (800) 397-4209, on or about January 25, 2007. This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

4. Attendees are requested to notify Mohammad S. Saba, at his previously stated contact information, of their planned attendance if special services, such as for the hearing impaired, are necessary.

Dated at Rockville, Maryland, this 27th day of September, 2006.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6-16267 Filed 10-2-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of October 2, 9, 16, 23, 30, November 6, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 2, 2006

Thursday, October 5, 2006

12:55 p.m.—Affirmation Session (Public Meeting) (Tentative) a. Entergy Nuclear Operations, Inc., (Pilgrim Nuclear Power Station), Massachusetts Attorney General's Petition for Backfit Order (Tentative).

Week of October 9, 2006—Tentative

There are no meetings scheduled for the Week of October 9, 2006.

Week of October 16, 2006—Tentative

Monday, October 16, 2006

9:30 a.m.—Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (morning session).

1:30 p.m.—Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (afternoon session) (Public Meetings) (Contact: Dave Matthews, 301-415-1199).

These meetings will be webcast live at the Web address—<http://www.nrc.gov>.

Friday, October 20, 2006

2:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of October 23, 2006—Tentative

Tuesday, October 24, 2006

9:30 a.m.—Briefing on Transshipment and Domestic Shipment Security of Radioactive Material Quantities of Concern (RAMQC) (Closed—Ex. 3) (morning session).

1:30 p.m.—Briefing on Transshipment and Domestic Shipment Security of Radioactive Material Quantities of Concern (RAMQC) (Closed—Ex. 3 & 9) (afternoon session).

Wednesday, October 25, 2006

9:30 a.m.—Briefing on Institutionalization and Integration of Agency Lessons Learned (Public Meeting) (Contact: John Lamb, 301-415-1727).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

1:30 p.m.—Briefing on Resolution of GSI-191, Assessment of Beris Accumulation on PWR Sump Performance (Public Meeting) (Contact: Michael L. Scott, 301-415-0565).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of October 30, 2006—Tentative

There are no meetings scheduled for the Week of October 30, 2006.

Week of November 6, 2006—Tentative

Wednesday, November 8, 2006

9:30 a.m.—Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Paul Rebstock, 301-415-3295).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Thursday, November 9, 2006

9:30 a.m.—Briefing on draft Final Rule—Part 52 (Early Site permits/ Standard Design Certification/ Combined Licenses) (Public Meeting) (Contact: Dave Matthews, 301-6415-1199).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript of other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at DLC@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: September 28, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06-8470 Filed 9-29-06; 9:48 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Modify Requirements Regarding the Addition of LCO 3.0.9 on the Unavailability of Barriers Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) and model application relating to the modification of requirements regarding the impact of unavailable barriers, not explicitly addressed in technical specifications, but required for operability of supported systems in technical specifications (TS). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to add an LCO 3.0.9 that provides a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. Licensees of nuclear power reactors to which the models apply could then request amendments utilizing the model application, as generically approved by this notice, and confirming the applicability of the SE and NSHC determination to their reactors.

DATES: The NRC staff issued a **Federal Register** notice (71 FR 32145, June 2, 2006) which provided a Model Safety Evaluation (SE) and model application relating to modification of requirements regarding the addition to the TS of LCO 3.0.9 the impact of unavailable barriers; similarly the NRC staff herein provides a Model Application, including a revised Model Safety Evaluation. The NRC staff can most efficiently consider applications based upon the Model Application, which references the Model Safety Evaluation, if the application is submitted within one year of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: T. R. Tjader, Mail Stop: O-12H4, Division of Inspection and Regional Support, Office

of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1187.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000-06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the addition of LCO 3.0.9 to the TS which provides a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. This change was proposed for incorporation into the standard technical specifications by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF-427, Revision 2 (Rev 2). TSTF-427, Rev 2, can be viewed on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/techspecs.html>.

Applicability

This proposal to modify technical specification requirements by the addition of LCO 3.0.9, as proposed in TSTF-427, Rev 2, is applicable to all licensees.

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in

TSTF-427, Rev 2, to use the CLIP. The CLIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not request to adopt TSTF-427, Rev 2, under CLIP.

Public Notices

The staff issued a **Federal Register** notice (71 FR 32145, June 2, 2006) that requested public comment on the NRC's pending action to approve modification of TS requirements regarding the impact of unavailable barriers on supported systems in TS. In particular, following an assessment and draft safety evaluation by the NRC staff, the staff sought public comment on proposed changes to the STS, designated as TSTF-427. The TSTF-427 Revision 2 can be viewed on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/techspecs.html>. TSTF-427 Revision 2 may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room) at <http://www.nrc.gov/reading-rm/adams.html>.

In response to the notice soliciting comments from interested members of the public about modifying the TS requirements regarding the impact of unavailable barriers on supported systems in TS, the staff received one set of comments (from the TSTF Owners Groups, representing licensees). The specific comments are provided and discussed below:

General Comments and Comments on the Notice for Comment

1. *Comment:* Throughout the notice, reference is made to TSTF-427, Revision 1. Revision 2 of TSTF-427 was submitted to the NRC on May 3, 2006 (NRC accession number ML061240055). The document should be revised to reference Revision 2 instead of Revision 1.

Response: This notice of availability correctly references TSTF-427, Revision

2, which includes the addition of a discussion of barriers significant to Large Early Release (*i.e.*, containment bypass events) and external events, consistent with the implementation guidance in NEI 04-08. TSTF-427, Revision 2, was provided on the Web site for review and comment.

2. *Comment:* In the notice under "Applicability", the last two sentences state, "Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF-427, Rev 1". Should a licensee submit an application that requests adoption of TSTF-427 but includes significant variations or additional changes, it would facilitate the NRC's review for the licensee to acknowledge that the change is based on TSTF-427 so that the NRC may use the model Safety Evaluation to the extent possible. We recommend revising the last sentence to state, "Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not request to adopt TSTF-427, Rev 2. under the Consolidate Line Item Improvement Process".

Response: The staff agrees and the change in wording has been made.

3. *Comment:* The notice generally uses the term "barrier" but uses the term "hazard barrier" or "hazard barriers" nine times. TSTF-427 and the associated implementation guidance, NEI-04-08, use the term "barriers". We recommend that the document be revised to use the word "barrier" throughout instead of the phrase "hazard barrier" so that the Traveler, the implementation guidance, the model Safety Evaluation, the model application, and the notice are consistent.

Response: The staff agrees and the change in wording has been made for consistency.

Comments on the Model Safety Evaluation

1. *Comment:* Section 1.0, first paragraph, first sentence—The notice states that the NEI Risk-Informed Technical Specification Task Force (RITSTF) submitted TSTF-427, Revision 1. That is incorrect. TSTF-427 (including the most recent version, Revision 2) was submitted by the Technical Specifications Task Force (TSTF), not the NEI RITSTF. Note that *all* Travelers are submitted by the TSTF, even if the Traveler is risk-informed and developed with the NEI Risk Informed Technical Specification Task Force.

Response: The staff agrees to this clarification and the change in wording has been made.

2. *Comment:* Section 1.0—The quote of the proposed LCO 3.0.9, first sentence, contains an extra word not in TSTF-427, Revision 2. It states, “* * * any affected supported system * * *”. The word “affected” does not appear in TSTF-427 and should be removed. This same misquote appears in the last sentence of Section 1.

Response: The staff agrees and the wording correction has been made.

3. *Comment:* Section 2.0, first sentence, contains a typographical error. “TX” should be “TS”. Note that this wording is correct on the NRC’s Web site as ML061460020, but not in the published notice.

Response: The staff agrees and the typographical correction has been made.

4. *Comment:* Section 2.0, second paragraph, first sentence—the definition of barriers is not consistent with TSTF-427, Revision 2. Specifically, the notice states, “mechanical devices”, which was deleted from TSTF-427, Revision 2.

Response: The staff agrees and the term “mechanical devices” has been replaced with the term “installed structures or components”, to be consistent with TSTF-427, Revision 2.

5. *Comment:* Section 3.0, first paragraph, fourth sentence—The date given for NEI 04-08 is incorrect. The correct date is March 2006, not November 2005. Note that Section 7.0, “References”, provides the correct date.

Response: The date given for NEI 04-08 is corrected.

6. *Comment:* Section 3.0, second paragraph, first sentence—There is a wording error. The sentence should state, “* * * can be assessed using the same approach * * *” instead of “during the same approach”. Note that this wording is correct on the NRC’s Web site as ML061460020, but not in the published notice.

Response: The staff agrees and the wording correction has been made.

7. *Comment:* Section 3.0, numbered item 2—The last sentence is missing the verb. It should read, “The objective is to ensure that * * *”. Note that this wording is correct on the NRC’s Web site as ML061460020, but not in the published notice.

Response: The staff agrees and the wording correction has been made.

8. *Comment:* Section 3.0, sixth paragraph, second sentence—There is a typographical error. The sentence states, “* * * barriers that are n not able to perform * * *”. The extraneous “n” should be deleted. Note that this wording is correct on the NRC’s Web

site as ML061460020, but not in the published notice.

Response: The staff agrees and the typographical error has been corrected.

9. *Comment:* Section 3.0, third paragraph from end, last sentence—This sentence references Section 3.3. The correct reference is Section 3.1.3.

Response: The staff agrees and the correction has been made.

10. *Comment:* Section 3.1.1, last paragraph before Table 2—NUMARC 93-01 is misquoted. The notice states, “* * * configuration that is associated with a CDF higher than 1E-03 should not be entered voluntarily”. However, NUMARC 93-01, Section 11.3.7.2, states, “* * * CDF in excess of 10-3/year should be carefully considered before voluntarily entering such conditions. If such conditions are entered, it should be for very short periods of time and only with a clear detailed understanding of which events cause the risk level”. The notice wording should be revised. Note that Table 2 in the notice correctly describes the NUMARC 93-01 guidance.

Response: The staff agrees. To be consistent with NUMARC 93-01, the word “normally” has been added so that the phrase reads: “* * * should not normally be entered voluntarily”.

11. *Comment:* Section 3.1.1, Table 2—The table uses the undefined term “R_{CDF}”. This term should be defined.

Response: The staff agrees. The term has been defined.

12. *Comment:* Section 3.1.2, third paragraph—The following phrase is confusing, “* * * unplanned failures or discovered conditions may result in the unavailability of at least one train or subsystem for a particular initiating event”. A clear statement of the intent is in Section 1.0, which states, “* * * if the required OPERABLE train or subsystem becomes inoperable while this specification is in use, it must be restored to OPERABLE status within 24 hours or * * *”. The inoperability of the train that has the affected barrier is not the purpose of the 24-hour allowance—it is the inoperability of the opposite train. This phrase should be revised to be consistent with Section 1.0.

Response: The staff agrees and the change in wording has been made for consistency.

13. *Comment:* Section 3.1.2, third paragraph—The notice states, “Such conditions may result during application of LCO 3.0.9 from equipment failure on the operable train, or discovery of degraded barriers”. The statement is technically correct but the last phrase is misleading. The 24-hour allowance is only used when the redundant train required to be operable

by LCO 3.0.9 is found to be inoperable due to equipment failure or the failure of a barrier that protects the train from the same initiating event as the unavailable barrier on the first train. We recommend revising the sentence by replacing the last phrase with “* * * or discovery of a degraded barrier that protect all trains of a TS system from the same initiating event”.

Response: The staff agrees, and the wording has been revised for clarification.

14. *Comment:* Section 3.1.3, second paragraph, first sentence—This sentence is incorrect when it states, “The implementation guidance for LCO 3.0.9 (Reference 2) requires that the risk determination for an unavailable barrier be performed per the ICCDP calculation as described in Section 3.1 * * *”. The implementation guidance clearly states in Section 6.2, Step 7, first paragraph, “(The user is not limited by the example used in the TSTF-427 technical justification)”. Furthermore, Appendix A of the implementation guidance provides an example of a risk assessment program for barriers using a site-specific on-line risk tool. The example uses the ICCDP equation only to calculate the allowed time, T_c. This sentence in the notice should be revised to state, “The risk determination of an unavailable barrier is to be performed using the plant-specific configuration”.

Response: The staff agrees, and the wording has been revised for clarification.

15. *Comment:* Section 3.1.3, third paragraph, second sentence—This sentence has a grammar error. It should state, “The numerical guidance identified in Table 2 is applicable to * * * “not” are applicable to”.

Response: The staff agrees and the correction has been made.

16. *Comment:* Section 3.1.3, next to the last paragraph, last sentence—The sentence is not correct. The CLIIP states, “* * * LERF, then the methodology requires a calculation for ICLERP similar to the calculations performed for ICCDP, described in Section 3.1, or the applicability of LCO 3.0.9 must be limited to that one barrier”. This is inconsistent with TSTF-427, Section 4, and NEI 04-08, Section 6.2, Step 7.c, which states, “However, if the barrier protects a system that is significant to mitigation of containment by bypass events, such as interfacing systems LOCA or steam generator tube rupture, assess the LERF impact using a qualitative, quantitative, or blended approach, * * *. If a quantitative assessment of the LERF impact cannot be made, the use of LCO 3.0.9 at a given time should be limited to a single

barrier protecting a system that is significant to mitigation of containment bypass events". The notice should be revised to be consistent with the Traveler and the implementation guidance document.

Response: The staff agrees, and the wording has been revised for clarification.

17. *Comment:* Section 3.2, Item 3, first paragraph, last sentence—This is an incomplete sentence. We recommend revising it to state "Unnecessary plant shutdowns may occur due to discovery of * * *"

Response: The staff agrees to this clarification and change in wording has been made.

18. *Comment:* Section 3.2, next to the last paragraph, stipulation item 1—Reference to NEI 04–08 should be eliminated. Commitment to NEI 04–08 is discussed in the next paragraph. Note that the commitments in the Model Application do not reference NEI 04–08 in the first commitment.

Response: The staff does not agree that a change is necessary. The purpose of item 1 is to identify both required commitments, and the purpose of item 2 is to address necessary related revisions to procedures.

19. *Comment:* Section 3.2, last paragraph, stipulation item 2—The paragraph states, "Licensee procedures must be revised to ensure that the risk assessment and management process described in NEI 04–08 is used whenever a barrier is considered unavailable * * *" NEI 04–08 is not the only acceptable methodology that may be used to perform the risk assessment required by LCO 3.0.9. As stated in Section 6.0 of NEI 04–08, the document "* * * describes considerations for risk assessment and management relative to the use of LCO 3.0.9". The document discusses acceptable methods of assessment in Section 6.1 and the general process for risk assessments in Section 6.2. We recommend revising the paragraph to state, "Licensee procedures must be revised to ensure that the guidance on the assessment and management of risk in NEI 04–08 is used whenever a barrier is considered unavailable". The same change should be made to commitment 2 in Section 3.2, "Verification and Commitments", and in Enclosure 4 in the published Model Application.

Response: The staff agrees and the change in wording has been made for consistency.

20. *Comment:* Section 7.0, Reference 1—Revise Reference 1 to refer to Revision 2 of TSTF–427, dated May 3, 2006.

Response: The staff agrees and the correction has been made.

21. *Comment:* Section 7.0, Reference 7—For consistency, Reference 7 should list the May 2000 issuance date of Regulatory Guide 1.182.

Response: The staff agrees and the change in wording has been made for consistency.

Comments on the Proposed No-Significant-Hazards-Consideration Determination

1. *Comment:* Last paragraph—The notice states, "Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a no-significant-hazards consideration". The use of the double negative is confusing. We recommend revising the sentence to state, "Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change presents no significant hazards considerations under the standards set forth in 10 CFR 50.92(c)".

Response: The staff agrees and this clarifying change has been made.

Comments on the Model Application

1. *Comment:* Enclosure 3, "Revised Technical Specification Pages", should be shown as optional. Many licensees do not provide retyped technical specification pages in their license amendment requests.

Response: The staff does not agree that this proposed change is necessary. Submission of revised technical specification pages clearly identify the changes requested and enhance the staff's ability to conduct an efficient review, consistent with purpose of changes made in accordance with the Consolidated Line Item Improvement Process.

2. *Comment:* We recommend adding the Technical Specifications Branch Chief to the cc: list on the model application as has been done in other CLIP model applications.

Response: The staff agrees and the change has been made.

Dated at Rockville, Maryland, this 25th day of September 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch,
Division of Inspection and Regional Support,
Office of Nuclear Reactor Regulation.

Model Safety Evaluation, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–427; The Addition of Limiting Condition for Operation (LCO) 3.0.9 on the Unavailability of Barriers

1.0 Introduction

On May 3, 2006, the industry owners group Technical Specifications Task Force (TSTF) submitted a proposed change, TSTF–427, Revision 2, to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry (TSTF–427, Revisions 0 and 1 were prior draft iterations). TSTF–427, Revision 2, is a proposal to add an STS Limiting Condition for Operation (LCO) 3.0.9, allowing a delay time for entering a supported system technical specification (TS), when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges.

This proposal is one of the industry's initiatives being developed under the risk-informed TS program. These initiatives are intended to maintain or improve safety through the incorporation of risk assessment and management techniques in TS, while reducing unnecessary burden and making TS requirements consistent with the Commission's other risk-informed regulatory requirements.

The proposed change adds a new limiting condition of operation, LCO 3.0.9, to the TS. LCO 3.0.9 allows licensees to delay declaring an LCO not met for equipment supported by barriers unable to perform their associated support function, when risk is assessed and managed. This new LCO 3.0.9 states:

"When one or more required barriers are unable to perform their related support function(s), any supported system LCO(s) are not required to be declared not met solely for this reason for up to 30 days provided that at least one train or subsystem of the supported system is OPERABLE and supported by barriers capable of providing their related support function(s), and risk is

assessed and managed. This specification may be concurrently applied to more than one train or subsystem of a multiple train or subsystem supported system provided at least one train or subsystem of the supported system is OPERABLE and the barriers supporting each of these trains or subsystems provide their related support function(s) for different categories of initiating events.

[BWR only: For the purposes of this specification, the [High Pressure Coolant Injection/High Pressure Core Spray] system, the [Reactor Core Isolation Cooling] system, and the [Automatic Depressurization System] are considered independent subsystems of a single system.]

If the required OPERABLE train or subsystem becomes inoperable while this specification is in use, it must be restored to OPERABLE status within 24 hours or the provisions of this specification cannot be applied to the trains or subsystems supported by the barriers that cannot perform their related support function(s).

At the end of the specified period, the required barriers must be able to perform their related support function(s), or the supported system LCO(s) shall be declared not met."

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(i), the "Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specification * * *." TS Section 3.0, on "LCO and SR Applicability," provides details or ground rules for complying with the LCOs.

Barriers are doors, walls, floor plugs, curbs, hatches, installed structures or components, or other devices, not explicitly described in TS that support the performance of the functions of

systems described in the TS. For purposes of this TS, the term "barrier" refers to one or more devices which protect one train of a safety system from a given initiating event. A "degraded barrier" refers to a barrier that has been found to be degraded and must be repaired, or to a barrier that is purposefully removed or reconfigured to facilitate maintenance activities. As stated in NEI 04-08, LCO 3.0.9 specifically does not apply to fire barriers, snubbers, barriers which support ventilation systems or non-TS systems, or barriers which support TS systems where the unavailability of the barrier does not render the supported system inoperable.

Some TS required systems may require one or more functional barriers in order to perform their intended function(s) for certain initiating events for which the barriers provide some protective support function. For example, there are barriers to protect systems from the effects of internal flooding, such as floor plugs and retaining walls, and barriers are used to protect equipment from steam impingement in case of high energy line breaks. Barriers are also used to protect systems against missiles, either internally generated, or generated by external events.

Barriers are not explicitly described in the TS, but are required to be capable of performing their required support function by the definition of OPERABILITY for the supported system which is described in the TS. Therefore, under the current STS, the supported system must be declared inoperable when the related barrier(s) are unavailable. However, the magnitude of plant risk associated with the barrier which cannot perform its related support function is much less than the risk associated with direct unavailability of the supported system, since barriers are only required for specific, low frequency initiating events.

Some potential undesirable consequences of the current TS requirements include:

1. When maintenance activities on the supported TS system require removal and restoration of barriers, the time available to complete maintenance and perform system restoration and testing is reduced by the time spent maneuvering the barriers within the time constraints of the supported system LCO;

2. Restoration of barriers following maintenance may be given a high priority due to time restraints of the existing supported system LCO, when other activities may have a greater risk

impact and should therefore be given priority; and

3. Unnecessary plant shutdowns may occur due to discovery of degraded barriers which require more time than provided by the existing supported system LCO to complete repairs and restoration of the barrier.

To improve the treatment of unavailable barriers and enhance safety, the TSTF proposed a risk-informed TS change that introduces a delay time before entering the actions for the supported equipment, when one or more barriers are found to be degraded, or are removed or reconfigured to support maintenance activities, if risk is assessed and managed. Such a delay time will provide needed flexibility in the performance of maintenance and at the same time will enhance overall plant safety by:

1. Performing system maintenance and restoration activities, including post-maintenance testing, within the existing TS LCO time, and allowing barrier removal and restoration to be performed outside of the TS LCO, providing more time for the safe conduct of maintenance and testing activities on the supported TS system;

2. Requiring barrier removal and restoration activities to be assessed and prioritized based on actual plant risk impacts; and

3. Avoiding unnecessary unscheduled plant shutdowns and thus minimizing plant transition and realignment risks.

3.0 Technical Evaluation

The industry submitted TSTF-427, Revision 2 (Reference 2), "Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY" in support of the proposed TS change. This submittal documents a risk-informed analysis of the proposed TS change. Probabilistic risk assessment (PRA) methods are used, in combination with deterministic and defense-in-depth arguments, to identify and justify delay times for entering the actions for the supported equipment associated with unavailable barriers at nuclear power plants. The industry also submitted implementation guidance NEI 04-08, March 2006 (Reference 2). This submittal provides detailed guidance on assessing and managing risk associated with unavailable barriers. This is in accordance with guidance provided in Regulatory Guides (RGs) 1.174 (Reference 3) and 1.177 (Reference 4).

The risk impact associated with the proposed delay times for entering the TS actions for the supported equipment can be assessed using the same approach as for allowed completion

time (CT) extensions. Therefore, the risk assessment was performed following the three-tiered approach recommended in RG 1.177 for evaluating proposed extensions in currently allowed CTs:

1. The first tier involves the assessment of the change in plant risk due to the proposed TS change. Such risk change is expressed (1) by the change in the average yearly core damage frequency (ΔCDF) and the average yearly large early release frequency ($\Delta LERF$) and (2) by the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP). The assessed ΔCDF and $\Delta LERF$ values are compared to acceptance guidelines, consistent with the Commission's Safety Goal Policy Statement as documented in RG 1.174, so that the plant's average baseline risk is maintained within a minimal range. The assessed ICCDP and ICLERP values are compared to acceptance guidelines in RG 1.177, which provide assurance that the plant

risk does not increase unacceptably during the period the equipment is taken out of service.

2. The second tier involves the identification of potentially high-risk configurations that could exist if equipment in addition to that associated with the change were to be taken out of service simultaneously, or other risk-significant operational factors such as concurrent equipment testing were also involved. The objective is to ensure that appropriate restrictions are in place to avoid any potential high-risk configurations.

3. The third tier involves the establishment of an overall configuration risk management program (CRMP) to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified. The objective of the CRMP is to manage configuration-specific risk by appropriate scheduling of plant activities and/or appropriate compensatory measures.

A simplified risk assessment was performed to justify the proposed addition of LCO 3.0.9 to the TS. This approach was necessitated by (1) the general nature of the proposed TS change (i.e., it applies to all plants and is associated with an undetermined number of barriers that are not able to perform their function), and (2) the lack of detailed modeling in most plant-specific PRAs which do not include passive structures such as barriers.

The simplified risk assessment considers three different parameters:

1. The length of time the affected barrier is unavailable,
2. The initiating event frequency for which the affected barrier is designed to mitigate, and
3. The importance to CDF (or LERF) of the TS equipment (train, subsystem, or component) for which the affected barrier is designed to protect, measured by the risk achievement worth of the equipment.

The ICCDP can be calculated based on the following equation:

$$ICCDP = \left[\frac{T_c}{8766} \times \frac{IE_i}{IE_T} \right] \times \left[(RAW_j \times CDF_{base}) - CDF_{base} \right]$$

Where:

- T_c is the time the barrier is unavailable (hours)
- $T_c/8766$ is therefore the fraction of the year during which the barrier is unavailable,
- IE_i/IE_T is the ratio of the initiating event frequency for which the affected barrier is designed to mitigate, IE_i , and the total initiating event frequency, IE_T ,
- RAW_j is the risk achievement worth of the component(s) for which the barrier provides protection, and
- CDF_{base} is the baseline core damage frequency (per year).

ICLERP also may be similarly determined, using baseline LERF and RAW values with respect to LERF. It is assumed that the magnitude of the LERF risk resulting from the barrier's inability to perform its related support function would be generally at least one order of magnitude less than the corresponding CDF risk. Containment bypass scenarios, which are typically the significant contributors to LERF, would not be uniquely affected by application of LCO 3.0.9, and initiating events which would be significant LERF contributors, such as steam generator tube rupture and interfacing systems LOCA, are not typically associated with barriers within the scope of LCO 3.0.9. Therefore, the assumption regarding LERF risk is reasonable and acceptable for the generic risk evaluation, provided

that LERF risk impacts are considered on a plant-specific basis for unavailable barriers, as described in section 3.1.3.

The relevant initiating events (i.e., events for which barriers subject to LCO 3.0.9 provide protection) are:

- Internal and external floods,
- High energy line breaks,
- Feedwater line breaks,
- Loss of coolant accident (small, medium, and large),
- Tornadoes and high winds, and
- Turbine missiles.

Generic frequencies for most of these initiating events were obtained from NUREG/CR-5750 (Reference 5). For external floods, turbine missiles, and tornadoes, other industry source documents were referenced. The most limiting (highest frequency) initiating event was obtained for a high energy line break from NUREG/CR-5750, with a frequency of $9.1E-3$ per year. The risk assessment is therefore based on this limiting frequency, and the proposed methodology to apply LCO 3.0.9 is similarly restricted to barriers protecting against initiating events whose total frequency is no more than $9.1E-3$ per year.

3.1 Risk Assessment Results and Insights

The results and insights from the implementation of the three-tiered

approach of RG 1.177 to support the proposed addition of LCO 3.0.9 to the TS are summarized and evaluated in the following Sections 3.1.1 to 3.1.3.

3.1.1 Risk Impact

The bounding risk assessment approach, described in Section 3.0, was developed for a range of plant baseline CDF values and for a range of protected component RAW values. The maximum allowable 30-day outage time was used. The results are summarized in Table 1.

TABLE 1.—RISK ASSESSMENT RESULTS FOR A POSTULATED 30-DAY BARRIER OUTAGE

RAW	ICCDP	ICLERP
Baseline CDF = 1E-6 per year		
2	7.5E-10	7.5E-11
10	6.7E-09	6.7E-10
50	3.7E-08	3.7E-09
100	7.4E-08	7.4E-09
Baseline CDF = 1E-5 per year		
2	7.5E-09	7.5E-10
10	6.7E-08	6.7E-09
50	3.7E-07	3.7E-08
100	7.4E-07	7.4E-08

TABLE 1.—RISK ASSESSMENT RESULTS FOR A POSTULATED 30-DAY BARRIER OUTAGE—Continued

RAW	ICCDP	ICLERP
Baseline CDF = 1E-4 per year		
2	7.5E-08	7.5E-09
10	6.7E-07	6.7E-08
50	3.7E-06	3.7E-07
100	7.4E-06	7.4E-07

The above results represent a sensitivity analysis covering the expected range of plant baseline CDF values and component RAW values. The most limiting configurations involving very high risk components (RAW > 10) would not be anticipated to occur for most planned maintenance activities.

The calculations conservatively assume the most limiting (highest frequency) initiating event and the

longest allowable outage time (30 days). Occurrence of the initiating event during unavailability of the barrier is conservatively assumed to directly fail the protected equipment; no credit is taken for event-specific circumstances which may result in the equipment remaining functional even with the barrier unavailable. (For example, a barrier required to protect equipment from steam impingement for high energy line breaks may only be required for breaks occurring in specific locations and orientations relative to the protected equipment, and only for large size breaks.) No credit is taken for avoided risk identified in Section 2.

The risk assessment results of Table 1 were compared to guidance provided in the revised Section 11 of NUMARC 93-01, Revision 2 (Reference 6), endorsed by RG 1.182 (Reference 7), for implementing the requirements of paragraph (a)(4) of the Maintenance

Rule, 10 CFR 50.65. Such guidance is summarized in Table 2. Guidance regarding the acceptability of conditional risk increase in terms of CDF for a planned configuration is provided. This guidance states that a specific configuration that is associated with a CDF higher than 1E-3 per year should not normally be entered voluntarily. The staff notes that the higher risk configurations documented in Table 1 would exceed this guidance, and would therefore not be permitted to be entered voluntarily. For example, with a baseline CDF of 1E-4 per year, a component with a RAW greater than 10 would exceed the 1E-3 per year criteria. Therefore, the sensitivity analyses presented in Table 1 are understood to include higher risk configurations which would not be permitted under the guidance of Reference 6.

TABLE 2.—GUIDANCE FOR IMPLEMENTING 10 CFR 50.65(A)(4)

ΔR_{CDF}	Guidance	
Greater than 1E-3/year	Configuration should not normally be entered voluntarily.	
ICCDP	Guidance	ICLERP
Greater 1E-5	Configuration should not normally be entered voluntarily	Greater than 1E-6.
1E-6 to 1E-5	Assess non-quantifiable factors. Establish risk management actions ..	1E-7 to 1E-6.
Less than 1E-6	Normal work controls	Less than 1E-7.

Guidance regarding the acceptability of ICCDP and ICLERP values for a specific planned configuration and the establishment of risk management actions is also provided in NUMARC 93-01. This guidance, as shown in Table 2, states that a specific plant configuration that is associated with ICCDP and ICLERP values below 1E-6 and 1E-7, respectively, is considered to require “normal work controls”. Table 1 shows that for the majority of barrier outage configurations the conservatively assessed ICCDP and ICLERP values are within the limits for what is recommended as the threshold for the “normal work controls” region.

As stated in the implementation guidance for LCO 3.0.9 (Reference 2), plants are required to commit to the guidance of NUMARC 93-01 Section 11, and therefore the above limits would be applicable. Plant configurations including out of service barriers may therefore be entered voluntarily if supported by the results of the risk assessment required by 10 CFR 50.65(a)(4), and by LCO 3.0.9.

RG 1.177 (Ref. 4) provides guidance of 5E-7 ICCDP and 5E-8 ILERP as the limit for a TS allowed outage time. As shown in Table 1, the guidance is met for the

typically anticipated configurations, unless either the baseline CDF for the plant approaches 1E-4 per year or the RAW of the protected components is well above 10. Such configurations may exceed the criteria described in Ref. 6 (Table 2) and would not be voluntarily entered. Such configurations are not expected to be frequently encountered, and may be addressed on a case-by-case plant-specific basis by limiting the allowed outage time and by implementing plant-specific risk management actions, as per the implementing guidance (Reference 2).

RG 1.174 (Ref. 3) provides guidance of 1E-5 per year ΔCDF and 1E-6 per year $\Delta LERF$. The ICCDP calculations demonstrated that each individual 30-day barrier outage is anticipated to be low risk. Although there is no explicit limit on the number of times per year that LCO 3.0.9 may be applied, even assuming barrier outages occurred continuously over the entire year, the risk incurred would still be anticipated to be below the limits of the guidance.

The staff finds that the risk assessment results support the proposed addition of LCO 3.0.9 to the TS. The risk increases associated with this TS change will be insignificant based on guidance

provided in RGs 1.174 and 1.177 and within the range of risks associated with normal maintenance activities.

3.1.2 Identification of High-Risk Configurations

The second tier of the three-tiered approach recommended in RG 1.177 involves the identification of potentially high-risk configurations that could exist if equipment, in addition to that associated with the TS change, were to be taken out of service simultaneously. Insights from the risk assessments, in conjunction with important assumptions made in the analysis and defense-in-depth considerations, were used to identify such configurations. To avoid these potentially high-risk configurations, specific restrictions to the implementation of the proposed TS changes were identified.

When LCO 3.0.9 is applied, at least one train or subsystem is required to be operable with required barriers in place, such that this train or subsystem would be available to provide mitigation of the initiating event. LCO 3.0.9 may be applied to multiple trains of the same system only for barriers which provide protection for different initiating events, such that at least one train or subsystem

is available to provide mitigation of the initiating event. The use of LCO 3.0.9 for barriers which protect all trains or subsystems from a particular initiating event is not permitted. Therefore, potentially high-risk configurations involving a loss of function required for mitigation of a particular initiating event are avoided by the restrictions imposed on applicability of LCO 3.0.9.

LCO 3.0.9 also addresses potential emergent conditions where unplanned failures or discovered conditions may result in the unavailability of a required train or subsystem for a particular initiating event. Such conditions may result during application of LCO 3.0.9 from equipment failure on the operable train, such that all trains of a TS system are not protected from the same initiating event. In such cases, a 24-hour allowed time is provided to restore the conditions to permit continued operation with unavailable barriers, after which the applicability of LCO 3.0.9 ends, and the supported system LCO becomes effective. This allowed time is provided so that emergent conditions with low risk consequences may be effectively managed, rather than requiring immediate exit of LCO 3.0.9 and the potential for an unplanned plant shutdown.

A limit of 30 days is applied to the LCO 3.0.9 allowed outage time for each barrier, after which the barrier must be restored to an available status, or the supported system TS must be applied. This 30-day backstop applies regardless of the risk level calculated, and provides assurance that installed plant barriers will be maintained available over long periods of time, and that the application of LCO 3.0.9 will not result in long term degradation of plant barriers.

The staff finds that the restrictions on the applicability of LCO 3.0.9 assuring that one safety train remains available to mitigate the initiating event, along with the 30-day limit applicable to each barrier, assure that potentially high-risk configurations are avoided in accordance with the guidance provided in RGs 1.174 and 1.177.

3.1.3 Configuration Risk Management

The third tier of the three-tiered approach recommended in RG 1.177 involves the establishment of an overall configuration risk management program (CRMP) to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified. The objective of the CRMP is to manage configuration-specific risk by appropriate scheduling of plant activities and/or appropriate compensatory measures. This objective is met by licensee programs to comply

with the requirements of paragraph (a)(4) of the Maintenance Rule (10 CFR 50.65) to assess and manage risk resulting from maintenance activities, and by LCO 3.0.9 requiring risk assessments and management using (a)(4) processes if no maintenance is in progress. These programs can support licensee decision making regarding the appropriate actions to manage risk whenever a risk-informed TS is entered.

The implementation guidance for LCO 3.0.9 (Reference 2) requires that the allowed outage time determination for an unavailable barrier be performed using the plant-specific configuration. Further, the risk determinations are to be updated whenever emergent conditions occur. These requirements assure that the configuration-specific risk associated with unavailable barriers is assessed and managed prior to entry into LCO 3.0.9 and during its applicability as conditions change.

These evaluations for the unavailable barrier are performed as part of the assessment of plant risk required by 10 CFR 50.65(a)(4). The numerical guidance identified in Table 2 is applicable to implementation of LCO 3.0.9, using the results of the configuration-specific risk assessment which addresses the risk impact of the unavailable barrier along with all other out of service components and plant alignments.

Risk management actions are required to be considered when the calculated risk exceeds specific thresholds per NUMARC 93-01 Section 11, as identified in Table 2. Additional guidance on risk management actions are provided in the implementation guidance for LCO 3.0.9.

The allowed outage time for a barrier is calculated based on an ICCDP limit of $1E-6$. This is the NUMARC 93-01 Section 11 guidance for applicability of normal work controls, and is conservatively lower than the guidance of $1E-5$ for voluntary maintenance activities. The use of $1E-6$ will result in conservatively short allowed outage times for barriers compared to allowed times for other maintenance activities.

If the scope of the PRA model used to support the plant-specific CRMP does not include the initiating event for which a barrier provides protection, then LCO 3.0.9 applicability is limited to one barrier on a single train. Multiple barriers for such initiating events may not be unavailable under LCO 3.0.9, and in such situations the LCO(s) associated with the protected components would be applicable. Applicability of LCO 3.0.9 to the single barrier for an initiating event that is not modeled in the plant PRA is acceptable based on the

generic risk analysis provided by TSTF-427, as described in Section 3.1.

Assessment of the LERF risk impact on an unavailable barrier is required to be performed in accordance with NUMARC 93-01 Section 11. If an unavailable barrier provides protection to equipment which is relevant to the containment function, or which protects equipment from the effects of an initiating event which is a contributor to LERF, then applicability of LCO 3.0.9 must be limited to that one barrier unless a quantified assessment of LERF is performed.

The staff finds that the risk evaluations necessary to support the applicability of LCO 3.0.9 appropriately consider the risk from unavailable barriers in an integrated manner based on the overall plant configuration. Therefore, potentially high-risk configurations can be identified and managed in accordance with the guidance provided in RGs 1.174 and 1.177.

3.2 Summary and Conclusions

The unavailability of barriers which protect TS required components from the effects of specific initiating events is typically a low risk configuration which should not require that the protected components be immediately declared inoperable. The current TS require that when such barriers are unavailable, the protected component LCO is immediately entered. Some potential undesirable consequences of the current TS requirements include:

1. When maintenance activities on the supported TS system requires removal and restoration of barriers, the time available to complete maintenance and perform system restoration and testing is reduced by the time spent maneuvering the barriers within the time constraints of the supported system LCO;

2. Restoration of barriers following maintenance must be given a high priority due to time restraints of the existing supported system LCO, when other more risk important activities may have a greater risk impact and should therefore be given priority; and

3. Unnecessary plant shutdowns may occur due to discovery of degraded barriers which may require more than the existing supported system LCO time to complete repairs and restoration.

To remove the overly restrictive requirements in the treatment of barriers, licensees are proposing a risk-informed TS change which introduces a delay time before entering the actions for the supported equipment when one or more barriers are found degraded or removed to facilitate planned

maintenance activities. Such a delay time will provide needed flexibility in the performance of maintenance during power operation and at the same time will enhance overall plant safety by (1) performing system maintenance and restoration activities, including post-maintenance testing, within the existing TS LCO time, and allowing barrier removal and restoration to be performed outside of the TS LCO, providing more time for the safe conduct of maintenance and testing activities on the supported system; (2) requiring barrier removal and restoration activities to be assessed and prioritized based on actual plant risk impacts; and (3) avoiding unnecessary unscheduled plant shutdowns, thus minimizing plant transition and realignment risks.

The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A simplified bounding risk assessment was performed to justify the proposed TS changes. This bounding assessment was selected due to the lack of detailed plant-specific risk models for most plants which do not include failure modes of passive structures such as barriers. The impact from the addition of the proposed LCO 3.0.9 to the TS on defense-in-depth was also evaluated in conjunction with the risk assessment results.

Based on this integrated evaluation, the staff concludes that the proposed addition of LCO 3.0.9 to the TS would lead to insignificant risk increases as stipulated by RG 1.177 and depicted on Table 1 above. This conclusion is true without taking any credit for the removal of potential undesirable consequences associated with the current conservative treatment of barriers. Therefore, the proposed change provides adequate protection of public health and safety and is acceptable provided the conditions set forth below are satisfied.

Consistent with the staff's approval and inherent in the implementation of TSTF-427, licensees interested in implementing LCO 3.0.9 must, as applicable, operate in accordance with the following stipulations:

1. The licensee must commit to the guidance of NUMARC 93-01, Section 11 (Reference 6) and to NEI 04-08 (Reference 2); and
2. Licensee procedures must be revised to ensure that the guidance on the risk assessment and management process described in NEI 04-08 is used whenever a barrier is considered unavailable and the requirements of LCO 3.0.9 are to be applied. This must be done in accordance with an overall CRMP to ensure that potentially risk-

significant configurations resulting from maintenance and other operational activities are identified and avoided.

4.0 State Consultation

In accordance with the Commission's regulations, the [] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and change surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no-significant-hazards considerations, and there has been no public comment on the finding [FR]. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. TSTF-427, Revision 2, "Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY", May 3, 2006.
2. NEI 04-08, "Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY (TSTF-427) Industry Implementation Guidance", March 2006.
3. Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk

Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis", USNRC, August 1998.

4. Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications", USNRC, August 1998.

5. "Rates of Initiating Events at U.S. Nuclear Power Plants", NUREG/CR-5750, Idaho National Engineering and Environmental Laboratory, February 1999.

6. Nuclear Energy Institute, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants", NUMARC 93-01, Revision 2, Section 11.

7. "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants", Regulatory Guide 1.182, May 2000.

Proposed No-Significant-Hazards-Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant-specific technical specifications (TS), to allow a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.9 will be added to individual TS providing this allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk

introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP and ICLERP) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change presents no-significant-hazards considerations per 10 CFR 50.92(c).

Dated at Rockville, Maryland, this ___ day of _____.

For the Nuclear Regulatory Commission.
Timothy J. Kobetz,
Chief, Technical Specifications Branch,
Division of Inspection and Regional Support,
Office of Nuclear Reactor Regulation.

THE FOLLOWING EXAMPLE OF AN APPLICATION WAS PREPARED BY THE NRC STAFF TO FACILITATE USE OF THE CONSOLIDATED LINE ITEM IMPROVEMENT PROCESS (CLIIP). THE MODEL PROVIDES THE EXPECTED LEVEL OF DETAIL AND CONTENT FOR AN APPLICATION TO REVISE TECHNICAL SPECIFICATIONS REGARDING THE ADDITION OF LCO 3.0.9 ON THE UNAVAILABILITY OF BARRIERS USING CLIIP. LICENSEES REMAIN RESPONSIBLE FOR ENSURING THAT THEIR ACTUAL APPLICATION FULFILLS THEIR ADMINISTRATIVE REQUIREMENTS AS WELL AS NUCLEAR REGULATORY COMMISSION REGULATIONS.

U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, D.C. 20555

SUBJECT:

PLANT NAME
DOCKET NO. 50—APPLICATION
FOR TECHNICAL SPECIFICATION
CHANGE TO ADD LCO 3.0.9 ON
THE UNAVAILABILITY OF
BARRIERS USING THE
CONSOLIDATED LINE ITEM
IMPROVEMENT PROCESS

Gentleman:

In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for unavailable barriers by adding LCO 3.0.9.

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of

America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

Signature
[Name, Title]

Attachments:

1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases Changes

cc: NRC Project Manager
NRC Regional Office
NRC Resident Inspector
NRC Technical Specifications Branch Chief
State Contact

Description and Assessment

1.0 DESCRIPTION

The proposed amendment would modify technical specifications (TS) requirements for unavailable barriers by adding LCO 3.0.9.

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF-427 Revision 2. The availability of this TS improvement was published in the **Federal Register** on [DATE] FR [] as part of the consolidated line item improvement process (CLIIP).

2.0 ASSESSMENT

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF-427. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the TSTF-427 Revision 2 or the NRC staff's model safety evaluation dated [DATE].

3.0 REGULATORY ANALYSIS

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

1. [LICENSEE] commits to the guidance of NUMARC 93-01 Section 11, which provides guidance and details on the assessment and management of risk during maintenance.

2. [LICENSEE] will revise procedures to ensure that the risk assessment and management process described in NEI 04-08 is used whenever a barrier is considered unavailable and the requirements of LCO 3.0.9 are to be applied, in accordance with an overall CRMP to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified and avoided.

4.0 ENVIRONMENTAL EVALUATION

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

* In conjunction with the proposed change, technical specifications (TS) requirements for a Bases Control Program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS.

LIST OF REGULATORY COMMITMENTS

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

REGULATORY COMMITMENTS	DUE DATE/ EVENT
[LICENSEE] commits to the guidance of NUMARC 93-01, Revision 2, Section 11, which provides guidance and details on the assessment and management of risk during maintenance.	[Ongoing or implement with amendment]
[LICENSEE] commits to the guidance of NEI 04-08, "Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY (TSTF-427) Industry Implementation Guidance," March 2006.	[Implement with amendment, when barrier(s) are unavailable]

* In conjunction with the proposed change, technical specifications (TS) requirements for a Bases Control Program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS.

[FR Doc. 06-8427 Filed 10-2-06; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request of the Office of Management and Budget (OMB)—OMB Control #0420-0513.

SUMMARY: The Associate Director for Management invites comments on Reinstatement, with change, of a previously approved collection for which approval has expired to OMB Control # 0420-0513, an information collection request as required pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35). This notice announces that Peace Corps has submitted to the Office of Management and Budget a request to approve Reinstatement, with change, of a previously approved collection for which approval has expired for PC Form-2042 (rev. 07/2006), Correspondence Match Enrollment Form. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps and the Paul D. Coverdell World Wise Schools' Correspondence Match program, including whether the information will have practical use; the accuracy of the agency's estimate of the

burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments must be submitted on or before December 4, 2006.

ADDRESSES: Comments should be mailed to Peace Corps, Office of Domestic Programs, Sally Caldwell, Director of World Wise Schools, 1111 20th Street, NW., Washington, DC 20526. Ms. Caldwell can be contacted by telephone at (202) 692-1425 or 800-424-8580, ext. 1425 or e-mail at scaldwell@peacecorps.gov. E-mail comments must be made in text and not in attachments.

Information Collection Abstract

OMB Control Number: 0420-0513.

Title: Correspondence Match Enrollment Form.

Need for and Use of the Information: The Peace Corps and Paul D. Coverdell World Wise Schools need this information to officially enroll educators in the Correspondence Match program. The information collected is used to make suitable matches between the educators and currently serving Peace Corps Volunteers.

Type of Review: Emergency—Reinstatement, with change, of a previously approved collection for which approval has expired.

Respondents: Educators interested in promoting global education in the classroom.

Respondents Obligation to Reply: Voluntary.

Burden on the Public:

- Annual reporting burden:* 1667 hours.
- Annual record keeping burden:* 250 hours.
- Estimated average burden per response:* 10 minutes.
- Frequency of response:* Annually.
- Estimated number of likely respondents:* 10,000.
- Estimated cost to respondents/ Agency:* 0/\$8,900.

This notice is issued in Washington, DC on September 28, 2006.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 06-8459 Filed 10-2-06; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 2, 2006:

A Closed Meeting will be held on Thursday, October 5, 2006 at 2:30 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (4), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Thursday, October 5, 2006 will be:

- Formal orders of investigation;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Adjudicatory matters;
- Regulatory matters regarding financial institutions; and
- Resolution of litigation matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: September 29, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. 06-8473 Filed 9-29-06; 11:16 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54509; File No. SR-Amex-2006-70]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Apply Certain Provisions of Its Minor Rule Violation Plan to Registered Options Traders, Supplemental Registered Options Traders, and Remote Registered Options Traders

September 26, 2006.

On July 31, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 590, which applies certain provisions the Exchange's Minor Rule Violation Plan to Registered Options Traders ("ROTs"), Supplemental Registered Options Traders ("SROTs"), and Remote Registered Options Traders ("RROTs").³ These provisions relate to quoting obligations and restrictions on quoting outside of assigned classes. On August 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 21, 2006.⁴ The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act⁶ because a proposed rule change that is reasonably designed to promote compliance by ROTs, SROTs, and RROTs with applicable quoting obligations and restrictions should help protect investors and the public interest.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amex recently created these new classes of market participants. See Securities Exchange Act Release Nos. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006) (creating the SROT class) and 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (creating the RROT class).

⁴ See Securities Exchange Act Release No. 54317 (August 15, 2006), 71 FR 48566.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

The Commission further believes that handling violations of these quoting rules pursuant to Amex's Minor Rule Violation Plan is consistent with sections 6(b)(1) and 6(b)(6) of the Act,⁷ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because existing Amex Rule 590 provides procedural rights to a person fined for any violation of an Exchange rule that is determined to be minor in nature to contest the fine and permits disciplinary proceedings on the matter, the Commission believes Amex Rule 590, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d)(1) of the Act.⁸

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act⁹ which governs minor rule violation plans. The Commission believes that the proposed change to Amex Rule 590 will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the minor rule violation plan of the Exchange. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan under Amex Rule 590 provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the minor rule violation plan or whether a violation requires formal disciplinary action.

⁷ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

⁹ 17 CFR 240.19d-1(c)(2).

under Amex's Rules of Procedure in Disciplinary Matters.

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁰ and Rule 19d-1(c)(2) under the Act,¹¹ that the proposed rule change (SR-Amex-2006-70), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,
Secretary.

[FR Doc. E6-16250 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54522; File No. SR-CHX-2006-26]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Prohibiting a Participant Firm From Earning Credits When Its Exchange Bill Is More Than 30 Days Past Due

September 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 22, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On September 22, 2006, the Exchange filed Amendment No. 1.³ The Exchange has designated this proposal as one establishing or changing a due, fee, or

other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Fee Schedule to provide that a CHX participant firm shall not be entitled to earn credits for any month when the participant firm's Exchange bill is more than 30 days past due. The text of the proposed rule change, as amended, is available on the Exchange's Web site at http://www.chx.com/rules/proposed_rules.htm, at the Office of the Secretary of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's Fee Schedule, the Exchange's participants, including its specialists and floor brokers, can qualify for credits that reduce the total monthly fees owed by these participants.⁶ These credits include a specialist "transaction credit" based on monthly tape revenue in securities reported on Tape A and B of the Consolidated Tape Association and a floor broker "earned credit" based on

the transaction fees received as a result of floor broker executions.⁷

Through this proposed rule change, the Exchange amends the Fee Schedule to add a new provision—applicable to all credits—that prevents a participant firm from earning credits for any month when payment of the firm's Exchange bill (from one or more previous months) is more than 30 days past due.⁸ The Exchange believes that this provision appropriately limits a participant's ability to receive credits from the Exchange when it has not paid an Exchange bill that has been due and owing for at least 30 days.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b)(4) of the Act⁹ provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder.¹¹ Accordingly, the proposal took effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such

⁷ See Fee Schedule, Section M(1)(specialist credits) and Section M(2)(a)(floor broker earned credits).

⁸ For example, a participant's February bill is distributed in early March (say, March 10) and due in early April (in this example, April 10). It would be 30 days past due on May 10. If a participant has not paid its February bill by May 10, the participant would not be eligible to receive credits for the month of May (and for any later months during which the bill remains unpaid).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified the new language it proposes to add to its Schedule of Participant Fees and Credits ("Fee Schedule"). Originally, the Exchange proposed that the Fee Schedule be amended to provide that a CHX participant firm shall not be entitled to "receive" credits for any month when the participant firm's Exchange bill is more than 30 days past due. In Amendment No. 1, the Exchange made a clarifying change, instead amending the Fee Schedule to provide that a CHX participant firm shall not be entitled to "earn" credits for any month when the participant firm's Exchange bill is more than 30 days past due. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on September 22, 2006, the date on which the CHX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ The Exchange's Fee Schedule also includes a new credit for two-sided quote providers and a credit for dedicated odd-lot dealers.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2006-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2006-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2006-26 and should be submitted on or before October 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris,

Secretary.

[FR Doc. E6-16248 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54521; File No. SR-DTC-2006-11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Allow the Inventory Management System To Accept Real-Time and Late Affirmed Trades From Omgeo

September 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 11, 2006, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on September 20, 2006, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to expand its Inventory Management System ("IMS") to accept in real-time non-Continuous Net Settlement ("non-CNS") institutional trades from Omgeo LLC ("Omgeo") and to accept late affirmed trades into IMS for automated settlement at DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

¹³ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Current Process for IMS

Omgeo's TradeSuite system currently feeds DTC a batch file of approximately 320,000 eligible affirmed institutional trades at approximately 1 p.m. on T+2. Delivering DTC participants then authorize or exempt these trades in IMS for automated settlement to be attempted at DTC. Any trades affirmed after 12 p.m. on T+2 are ineligible for automated settlement at DTC via the TradeSuite interface. These late affirmed trades are typically settled by the broker-dealer or custodian by processing a DTC Delivery Order ("DO"). These DOs experience a higher reclaim rate than deliveries of eligible affirmed trades.

2. Proposed Changes

DTC is proposing to enhance its interface with Omgeo to accept eligible affirmed non-CNS trades from Omgeo's TradeSuite system in real-time. Although DTC would receive affirmed trades from Omgeo's TradeSuite system in real-time as they are affirmed, participants would still have the ability to process authorizations and exemptions as they do today. Participants would be able to authorize trades as they are received into IMS through the existing options (*i.e.*, globally or on a trade-for-trade basis). Omgeo would continue to produce the Cumulative Eligible Trade report/file at approximately 1 p.m. on T+2. This batch report/file notifies participants of affirmed MITS trades sent to IMS for the following settlement date. However, IMS would continue the current practice of applying a participant's authorization profile (delivery order) for Matched Institutional Trades ("MITS") after the midday cut-off on T+2 (at approximately 1 p.m.).

In addition, some new functionality is also being introduced through the enhanced Omgeo and DTC interface. Omgeo would send "late affirmed"³ trades to IMS. Late affirmed trades would be stored and identified in IMS as a new transaction type, Late Matched Institutional Trades ("LMIT"). These trades are currently ineligible for automated settlement at DTC. This functionality will allow participants to eliminate settling these transactions as DOs at DTC, which experience a higher reclaim rate than affirmed eligible

³ Late affirmed trades are defined as trades affirmed after the 12:00 p.m. cutoff on T+2 until 12:00 p.m. on settlement date.

¹² See supra at note 3.

trades, and will provide for the automated settlement of these transactions.

For the new LMITs, IMS would default to the "active" authorization mode (*i.e.*, deliveries would not be processed unless they are authorized). Unauthorized "late affirmed" trades would remain in IMS until settlement date + 21 days (the current IMS trade retention time frame). For authorized LMIT items, IMS would apply a participant's authorization profile as the items are received from Omgeo. LMITs would bypass DTC's Receiver Authorized Delivery ("RAD") processing as do all Omgeo deliveries.

Omgeo would notify both IMS and DTC participants directly using a status message of any Change of Eligibility ("COE").⁴ COE (*i.e.*, DTC-eligible to DTC-ineligible) messages would be passed to IMS by TradeSuite up until midnight of T+1. IMS would process COE related messages on a real-time basis for both authorized and yet to be authorized trades. IMS would "reauthorize" a previously authorized DTC-eligible trade in the event the trade becomes DTC-eligible, again. In addition, an appropriate audit trail would be provided by IMS for participants. Ineligible MITS transactions in IMS would be cancelled at end of day on settlement date.

DTC would charge the following delivery fees for LMITs:

- \$0.17 (current Night Delivery Order fee) if authorized by the participant before the night cycle.
- \$0.45 (current day DO fee) if authorized by the participant after the night cycle.
- \$0.006 per delivery (current IMS delivery fee) for every trade that is processed through the IMS authorization profile.

⁴ COE related messages can be sent for the following reasons: (1) When a DTC eligible trade changes to CNS eligible, the trade is re-sent to IMS by Omgeo with an indicator that it is now ineligible (IMS status becomes ineligible). Omgeo will then send the trade to NSCC for settlement via CNS. A trade can become CNS eligible after being DTC eligible, if the security, ID Agent (a prime broker), Clearing Agent, and Clearing Broker all are CNS eligible.

(2) When a DTC eligible trade subsequently becomes ineligible for settling at DTC, the trade is re-sent to IMS by Omgeo with an indicator that it is now Ineligible (IMS status updated to ineligible). A Trade may become ineligible for DTC settlement processing if prior to settlement date, the participant, security, or ID Agent become ineligible for DTC processing.

(3) If a previously sent DTC eligible trade changed to ineligible becomes eligible for settling at DTC, again, the trade is re-sent to IMS by Omgeo with an indicator that it is now eligible (IMS status is updated to eligible from ineligible).

Participants that currently submit machine-readable authorization/exemption instructions could choose to continue to process their Omgeo deliveries as they do today. The proposed change is scheduled to be implemented in November 2006.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC because it should promote the prompt and accurate clearance and settlement of securities transactions by allowing IMS to enhance its interface with Omgeo to accept eligible affirmed trades from Omgeo's TradeSuite system in real-time and to accept late affirmed trades into IMS for automated settlement at DTC. In addition, the proposed rule change should provide for the equitable allocation of reasonable dues, fees, and other charges among DTC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received any written comments on this proposal. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2006-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2006-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at <https://login.dtcc.com/dtcorg/>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2006-11 and should be submitted on or before October 24, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,

Secretary.

[FR Doc. E6-16251 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

⁵ 15 U.S.C. 78q-1.

⁶ 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-54508; File No. SR-ISE-2006-44]

**Self-Regulatory Organizations;
International Securities Exchange, Inc.;
Notice of Filing of a Proposed Rule
Change to Expand the Broker
Marketing Alliance To Include Non-
Broker-Dealers With Regard to the
Enhanced Sentiment Market Data
Offering**

September 26, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2006, the International Securities Exchange, Inc. (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s
Statement of the Terms of Substance of
the Proposed Rule Change**

The Exchange proposes to amend its Schedule of Fees regarding the enhanced sentiment market data offering to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The text of the proposed rule change is available at the ISE, at the Commission’s Public Reference Room, and at <http://www.iseoptions.com>.

**II. Self-Regulatory Organization’s
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization’s
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change*

1. Purpose

The ISE is proposing to amend its Schedule of Fees regarding the enhanced sentiment market data offering.³ Specifically, the Exchange proposes to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The Exchange’s enhanced sentiment market data offering, and the Broker Marketing Alliance, was previously approved by the Commission.⁴ A Broker Marketing Alliance is an arrangement between ISE and a participating U.S. broker-dealer that markets the enhanced sentiment offering to its customers. A Broker Marketing Alliance enables a participating U.S. broker-dealer to participate in a revenue sharing arrangement with the Exchange for each of their referred customers that subscribes to the enhanced sentiment offering. Additionally, broker-dealers receive a rebate of 35% of the subscription fee collected from subscribers. An additional bonus rebate may also be paid to broker-dealers for achieving subscription levels based on the size of their firm and the number of clients that subscribe to the service.

Since the introduction of this market data offering, the Exchange has received interest from many non-broker-dealers seeking to participate in an arrangement similar to the Broker Marketing Alliance. These non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, have expressed an interest to sell subscriptions to this offering. If the Commission approves this proposed rule change, the Exchange will be able to enter into a marketing alliance agreement with both broker-dealers and non-broker-dealers. As before, such an agreement will enable both broker-dealers and non-broker-dealers to participate in a revenue sharing arrangement for each of their referred customers that subscribes to the enhanced sentiment offering and potentially be paid an additional bonus rebate for achieving subscription levels based on the size of their firms and the

³ The Commission notes that enhanced sentiment market data is a product that allows an end user to retrieve a sentiment value for an individual symbol using a query tool and includes a sentiment scanning tool that allows a user to comb the market for sentiment levels that meet pre-defined parameters. See Securities Exchange Act Release No. 53756 (May 3, 2006), 71 FR 27529 (May 11, 2006) (SR-ISE-2005-56).

⁴ See *id.*

number of clients that subscribe to this market data offering.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,⁵ which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that expanding the Broker Marketing Alliance to allow participation by non-broker-dealers provides a greater number of market participants with an opportunity to obtain enhanced sentiment market data in furtherance of their investment decisions.

*B. Self-Regulatory Organization’s
Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization’s
Statement on Comments on the
Proposed Rule Change Received From
Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2006-44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-44 and should be submitted on or before October 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-16249 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54511; File No. SR-PCX-2005-53]

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 To Create a New Order Type—Passive Liquidity Orders—for Use on NYSE Arca Marketplace

September 26, 2005.

I. Introduction

On April 15, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) ("NYSE Arca" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. (n/k/a "NYSE Arca Equities, Inc."), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to create a new order type, the Passive Liquidity Order ("PL Order"), for use on NYSE Arca, LLC (f/k/a the Archipelago Exchange) ("NYSE Arca Marketplace"). The Exchange filed Amendment No. 1 to the proposed rule change on June 3, 2005.³ The Exchange filed Amendment No. 2 to the proposed rule change on August 26, 2005.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on September 21, 2005.⁵ The Commission received 2 comments from the public in response to the proposed rule change.⁶ The Exchange filed Amendment No. 3 to the proposed rule change on December 1, 2005.⁷ The Exchange filed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaced the original filing, made technical and clarifying changes to the proposed rule change.

⁴ Amendment No. 2, which replaced Amendment No. 1, clarified the execution priority of Passive Liquidity Orders by NYSE Arca Equities Rule 7.37, as compared to other orders that are part of the Display Order Process and the Working Order Processes, and as compared to Directed Fills in the Display Order Process. In addition, Amendment No. 2 made other technical and clarifying changes to the proposed rule change.

⁵ See Securities Exchange Act Release No. 52436 (September 14, 2005, 70 FR 55441).

⁶ See letter from George U. Sauter, Managing Director, the Vanguard Group, Inc., to Jonathan G. Katz, Secretary, Commission, dated October 12, 2005 ("Vanguard letter"). See also letter from Neal L. Wolkoff, Chairman and CEO, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated June 28, 2005 ("Amex Letter").

⁷ Amendment No. 3 proposed that in securities where the NYSE Arca Marketplace is the primary

Amendment No. 4 to the proposed rule change on August 28, 2006.⁸ This order approves the proposed rule, as amended by Amendment Nos. 1 and 2; grants accelerated approval to Amendment Nos. 3 and 4; and solicits comments from interested persons on Amendment Nos. 3 and 4.

II. Description

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to establish a new order type, the PL Order. The PL Order would be an order to buy or sell a stated number of shares of a security at a specified, undisplayed price.

Under the proposal, PL Orders would be entered with a size of at least 200 shares and would only be permitted in round lot denominations. PL Orders would not route out of NYSE Arca Marketplace to other Market Centers⁹ and would not execute against incoming orders sent from other markets.

The NYSE Arca Marketplace ranks and maintains limit orders in the NYSE Arca Marketplace Order Book ("NYSE Arca Book") according to price/time priority and generally affords priority to displayed orders in the Display Order Process and prices over undisplayed orders in the Working Order Process, sizes and prices. However, PL Orders with a price superior to that of displayed orders would have price priority and would execute ahead of inferior priced displayed orders in the Display Order Process. A PL Order would be executed in the Working Order Process after all other orders, including Reserve Orders and the display portion of Discretionary Orders at a particular price level, but would have priority over undisplayed Discretionary Order interest. In addition, PL Orders with a price superior to that of Directed Fills would have price priority and would execute ahead of inferior priced Directed Fills in the Directed Order Process.

In Amendment No. 3, the Exchange proposed that in securities where the Exchange is the primary listings market for which an LMM has been registered, the PL Order would be available only to the LMM registered in the primary

listings market and there is a Lead Market Maker ("LMM"), the PL Order would be limited to the LMM registered in the primary listing. In exchange for this exclusive use, LMMs would be subject to performance standards, as defined by the Exchange. In Amendment No. 3, the Exchange also addressed comments made in the Vanguard Letter.

⁸ Amendment No. 4 proposed that LMMs who are registered in the primary listing of an issue on the NYSE Arca Marketplace may execute PL Orders only if such LMMs comply with certain quotation requirements.

⁹ 17 CFR 242.600(b)(38).

⁶ 17 CFR 200.30-3(a)(12).

listing. As part of its rationale for allowing this exclusive listing, the Exchange stated that such exclusive use of the PL Order by LMMs for primary listings is consistent with allowing the LMM the exclusive use of the Directed Process in primary listings.¹⁰ LMMs must adhere to the quote spread and size levels set by the Exchange in order to be registered as LMMs on the Exchange. In all other equity and ETF issues traded on the Exchange, whether dually listed issues or issues traded pursuant to unlisted trading privileges, the PL Order would remain available to all Users.

In Amendment No. 4, the Exchange proposed that Lead Market Makers ("LMMs") who are registered in the primary listing of an issue on the NYSE Arca Marketplace would have exclusive access to PL Orders only if such LMMs comply with certain requirements. Specifically, in such instance, the Exchange proposes that a buy (sell) PL Order will only execute against an incoming sell (buy) marketable order only if one of the following conditions is met: (1) The NYSE Arca Book is at the national best bid (offer) ("NBBO") and the LMM has a displayed bid (offer) equal to the NYSE Arca Marketplace best bid (offer) ("BBO") with a quoted size at least as large as the total size of the incoming marketable sell (buy) order against which the PL Order would trade; (2) the NYSE Arca Book is at the NBBO and the LMM has a displayed bid (offer) \$0.01 below (above) the NYSE Arca Marketplace BBO with a quoted size at least twice as large as the total size of the incoming marketable sell (buy) order against which the PL Order would trade; or (3) where the NYSE Arca Book is not at the NBBO and the price of the PL Order is at least \$0.01 higher (lower) than the NYSE Arca Book BBO and the incoming marketable order is not designated as an "inter-market sweep" order as defined in Regulation NMS.¹¹ The Exchange also clarified that a PL Order would not execute if it is priced inferior to the other orders in the NYSE Arca Book or if the LMM does not have

a displayed order within \$0.01 of the BBO when NYSE Arca is at the NBBO.

III. Comments Received

As stated above, the Commission received two comment letters on this proposal.¹² One commenter requested that the Commission abstain from granting accelerated approval because the proposed order type raises issues about market structure that should be vetted publicly.¹³

Another commenter stated that undisplayed orders, including the proposed PL Order, create a disincentive to displaying limit orders, which the commenter believes is not in the best interest of an efficient market structure.¹⁴ To the extent Market Centers offer such order types, however, the commenter agrees that they should be available to all users.¹⁵

In its response to the Vanguard Letter,¹⁶ the Exchange stated that the introduction of the PL Order would attract liquidity to the Exchange and that with this additional order type, investors can express their trading interest more accurately than is possible with other order types. In addition, as discussed above, the Exchange believes that restricting the use of the PL Order to LMMs is consistent with the Exchange's rule limiting the Directed Order Process to LMMs in primary listings and is justified by the fact that LMMs would be subject to performance standards relating to quote spread and size levels set by the Exchange and would have to comply with certain display requirements.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether Amendment Nos. 3 and 4 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

¹² See Amex Letter and Vanguard Letter, *supra* note 6.

¹³ See Amex Letter, *supra* note 6.

¹⁴ See Vanguard Letter, *supra* note 6, at 1.

¹⁵ See Vanguard Letter, *supra* note 6 at 3.

¹⁶ See Amendment No. 3, *supra* note 7.

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to Amendment Nos. 3 and 4 to File Number SR-PCX-2005-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Amendment Nos. 3 and 4 to File Number SR-PCX-2005-53 and should be submitted on or before October 24, 2006.

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and; in general, to protect investors and the public interest.

¹⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁰ See Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (approving the Exchange's new Directed Order Process which introduced the classifications of LMMs on the Exchange and defined a LMM as "a registered Market Maker that is the exclusive Designated Market Maker in listings for which the [Exchange] is the primary market"). The difference between the Directed Order Process and PL Orders is that the possible price improvement offered by a PL Order would be available to incoming marketable orders submitted by any User, and not just those orders from specified Users as determined by the LMM.

¹¹ 17 CFR 242.600(b)(30).

This proposal would create a new order type, the PL Order. The Commission believes that the proposal is reasonably designed to permit passive interaction with incoming orders while protecting displayed orders in the NYSE Arca Book that are priced at or better than the PL Order. In the Vanguard Letter, the commenter was concerned that the proposed PL Order would create a disincentive to displaying limit orders. The Commission emphasizes the fact that a PL Order would never execute ahead of a displayed order that is at the same or a better price. As noted above, PL Orders would be executed in the Working Order Process¹⁹ after all other orders, including reserve orders and the display portion of discretionary orders at a particular price level.²⁰

The Commission believes that the ability of LMMs appointed in primary listings on the Exchange to use the PL Order exclusively is consistent with the requirements of the Act. The Commission notes that NYSE specialists similarly have exclusive ability to provide price improvement to incoming orders on its Hybrid system only if the specialists are meaningfully represented in the BBO and provide a minimum amount of price improvement.²¹ LMMs appointed in primary listings would be able to use the PL Order only if (1) the NYSE Arca Book is at the NBBO, the order is priced better than the Exchange's BBO by the Minimum Price Variation ("MPV"), and the LMM is quoting a certain minimum amount in proximity to the Exchange's BBO²² or (2) the NYSE Arca Book is not at the NBBO, the order is priced better than the Exchange's BBO by the MPV, and the incoming order is not designated an inter-market sweep order.²³ The Commission believes that permitting Users of the PL Order to provide price improvement by at least the MPV could increase the quality of NYSE Arca's market, and that the condition that LMMs must quote a minimum amount in proximity to the Exchange's BBO

might enhance depth and liquidity at or near the Exchange's BBO.

VI. Accelerated Approval of Amendment Nos. 3 and 4

The Commission finds good cause for approving Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.²⁴ In Amendment No. 3, the Exchange proposed that in issues where NYSE Arca Marketplace is the primary listing market and there is an LMM, the PL Order would be available only to the LMM registered in the primary listing. The Exchange also proposed that LMMs would be held to certain performance obligations related to quote size and quote spread. In Amendment No. 4, the Exchange proposed that LMMs who are registered in the primary listing of an issue on the NYSE Arca Marketplace will have exclusive access to PL Orders only if such LMMs comply with certain quoting and price improvement requirements.

The Commission believes that limiting use of the PL Order to LMMs registered in a primary listing raises no novel issue of regulatory concern because, as noted above, the Commission recently approved a similar functionality for New York Stock Exchange "NYSE" specialists.²⁵ Under NYSE Hybrid Rules, NYSE specialists may employ algorithms which generate trading messages that provide price improvement to incoming orders only if the specialist is represented in a meaningful amount in the NYSE's BBO.²⁶ Accordingly, the Commission finds good cause to accelerate approval of Amendment Nos. 3 and 4.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-PCX-2005-53), as amended by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment Nos. 3 and 4 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Nancy M. Morris,
Secretary.

[FR Doc. E6-16247 Filed 10-2-06; 8:45 am]

BILLING CODE 8010-01-P

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

²⁶ See NYSE Rule 104.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 5563]

U.S. Department of State Advisory Committee on Private International Law: Notice of Hearing

The U.S. Department of State Advisory Committee on Private International Law will hold a meeting on October 19th and 20th, 2006 at the Georgetown University Law Center, 600 New Jersey Avenue, NW., Washington, DC. Thursday's meeting will be held on the 12th floor of the Gewirz Building and Friday's meeting will be in Room 200 of the McDonough Building. The meetings will start both days at 9 a.m. and will end on Thursday, October 19th at 5 p.m. and on Friday, October 20th at 3 p.m. The meetings will discuss the general "state of the world" developments in the areas of investment securities law, computer-age revolution, international family law and the emerging family process, the process of new convention on the child support, judicial assistance and arbitration, e-apostilles and reports on other Private International Law projects.

The meeting is open to the public up to the capacity of the meeting room. Interested persons are invited to attend and to express their views. Persons who wish to have their view considered are encouraged, but not required, to submit written comments in advance. Comments should be sent electronically to SmeltzerTK@State.gov. Anyone planning to attend this meeting should provide their name, affiliation and contact information in advance to Trish Smeltzer or Renetta Davis at 202-776-8420 or by e-mail to DavisRX@state.gov.

Dated: September 26, 2006.

Harold S. Burman,

Executive Director, Department of State.

[FR Doc. E6-16301 Filed 10-2-06; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by the Aircraft Certification Service.

SUMMARY: The FAA's Aircraft Certification Service publishes proposed non-regulatory documents that are available for public comment on the Internet at http://www.faa.gov/aircraft/draft_docs/.

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION: Final advisory circulars, other policy documents, and technical standard orders (TSOs) are available on FAA's Regulatory and Guidance Library (RGL) at <http://www.airweb.faa.gov/rgl>.

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Director, Aircraft Certification service, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the "Aircraft Certification Draft Documents Open for Comment" Web site at http://www.faa.gov/aircraft/draft_docs/. For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202-267-8361.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. On the Web site, you may subscribe to our service for e-mail notification when new draft documents are made available. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by the Aircraft Certification service will appear again in 30 days.

Issued in Washington, DC, on September 26, 2006.

Frank Paskiewicz,

Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 06-8464 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held October 23-26, 2006 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Colson Board Room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- October 23:
 - All Day, Working Group—Section 21, Emission of Radio Frequency Energy.
- October 24:
 - All Day, Working Group—Section 16, Power Input.
 - All Day, Working Group—Section 21, Emission of Radio Frequency Energy.
- October 25-26.
 - Opening Plenary Session (Welcome and Introductory Remarks).
 - Approval of Summary from the Forty-Seventh Meeting.
- RTCA Paper No. 088-06/SC135-655.
 - Chairman's Update.
 - DO-160E Errata Paper is Published.
 - Clarity Schedule ("substantial change deadline").
 - Review Results of EUROCAE ED-14 September Meeting.
 - Review Status of Working Groups.
 - Section 16, Power Input.

- Section 20, Radio Frequency Susceptibility (Radiated and Conducted).

- Section 21, Emission of Radio Frequency Energy.

- Review List of Change Proposals for all other Sections.

- Review Status of Draft of New Section 27, Toxic Fumes.

- Discuss Status/Progress of User Guide Information.

- Review Schedule to Release DO-160E.

- Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 27, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06-8460 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode S Transponder

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, ATCRBS/Mode S Transponder.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode S Transponder.

DATES: The meeting will be held October 18-19, 2006, from 9 a.m.-5 p.m.

ADDRESSES: The meeting will be held at Honeywell, 23500 West 105th St., Olathe, KS 66061.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9434; Web site <http://www.rtca.org>, Honeywell contact: Don Walker; telephone (913) 712-2193, e-mail don.walker@honeywell.com; Honeywell Secretary contact: Gary Furr;

telephone (609) 485-4254, e-mail gary.ctr.furr@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. The agenda will include: October 18-19:

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review/Approval of Agenda, Review/Approval of Minutes from Meeting #3).

- Report from Team reviewing the ADLP MOPS, DO-218B.

- Draft v1.2 of the Proposed Appendix B.

- Report from Team reworking DO-181C.

- Report from Team reviewing the update of Test Procedures.

- Status of the ED-73B/DO-181C Requirements Comparison data base.

- Status of the coordination with WG-49

- Compliance Verification for ELS, EHS & ADS-B Applications.

- Guidance Material for Mode-S Specific Protocol Applications.

- Review of Proposals on Work to Restructure and Produce DO-144A.

- Review of Status of Action Items.

- Updated Review of P1-P3-P4 Accept/Reject (AI-3-1).

- Updated Issues with BDS 4.0 Data Loading (AI-3-1).

- Closing Plenary Session (Other Business, Discussion of Agenda for Next Meeting, Date, Place and Time of Future Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 22, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06-8461 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting, RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters.

DATES: The meeting will be held on October 23-24, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036-5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036-5133; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- October 23-24, 2006:

- Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Terms of Reference/Status).

- Approval of Summary for the Sixth meeting held on 19-20 July 2006, RTCA Paper No. 184-06/SC204-017.

- EUROCAE ELT Status.

- Committee Presentations, Discussion, Recommendations.

- Revisions/Updates to DO-204—*Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT)*.

- Any New Items Discussions.

- Revisions/Updates to DO-183—*Minimum Operational Performance Standards for Emergency Locator Transmitters—Automatic Fixed-ELT (AF), Automatic Portable-ELT (AP), Automatic Deployable-ELT (AD), Survival-ELT (S) Operating on 121.5 and 243.0 Megahertz*.

- Closing Session (Other Business, Assignment/Review of Future Work, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06-8463 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25751]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from forty-five individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 2, 2006.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA-2006-25751 using any of the following methods:

- Web site: <http://dmses.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, maggi.gunnels@dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The forty-five individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

John N. Anderson

Mr. Anderson, age 48, has had ITDM since 1986. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions

resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Federico G. Barajas

Mr. Barajas, 56, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barajas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from California.

Carl E. Bassinger

Mr. Bassinger, 58, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bassinger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Allan C. Boyum

Mr. Boyum, 49, has had ITDM since 2000. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes

management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boyum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Terry L. Brantley

Mr. Brantley, 35, has had ITDM since 2003. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brantley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Steven E. Brechting

Mr. Brechting, 49, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brechting meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Matthew T. Brown

Mr. Brown, 27, has had ITDM since 1991. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

James P. Campbell

Mr. Campbell, 45, has had ITDM since 2002. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Campbell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Scott A. Carlson

Mr. Carlson, 35, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carlson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

James F. Carroll

Mr. Carroll, 50, has had ITDM since 2002. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carroll meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Joseph L. Coggins

Mr. Coggins, 56, has had ITDM since 1992. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coggins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from South Carolina.

Edward V. Coppinger

Mr. Coppinger, 40, has had ITDM since 1998. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coppinger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Georgia.

Walter C. Evans

Mr. Evans, 45, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Evans meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Connecticut.

Michael H. Foley

Mr. Foley, 34, has had ITDM since 1999. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Foley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A operator's license from North Dakota.

Lawrence S. Forcier

Mr. Forcier, 41, has had ITDM since 1994. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Forcier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class 2 operator's license from Connecticut, which qualifies him to drive any motor vehicle, except a commercial motor vehicle, an articulated vehicle, or combination of motor vehicle and trailer where the gross weight of the trailer is more than 10,000 pounds.

Stephanie D. Fry

Ms. Fry, 34, has had ITDM since 1988. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Fry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Wyoming.

Robert W. Gaultney, Jr.

Mr. Gaultney, 47, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gaultney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Maryland.

Marlin R. Hein

Mr. Hein, 49, has had ITDM since 2001. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hein meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Paul T. Kubish

Mr. Kubish, 54, has had ITDM since 2002. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kubish meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Carolyn J. Lane

Ms. Lane, 48, has had ITDM since 2002. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using

insulin, and is able to drive a CMV safely. Ms. Lane meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Randall L. Lay

Mr. Lay, 40, has had ITDM since 1983. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B operator's license from Illinois.

David M. Levy

Mr. Levy, 42, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Levy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Shelton R. Lynch

Mr. Lynch, 53, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lynch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Sterling C. Madsen

Mr. Madsen, 50, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Madsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Sterlon E. Martin

Mr. Martin, 61, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Virginia.

Bradley Monson

Mr. Monson, 46, has had ITDM since 1985. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Monson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

David F. Morin

Mr. Morin, 47, has had ITDM since 1976. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Jeffrey J. Morinelli

Mr. Morinelli, 51, has had ITDM since 1963. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morinelli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Nebraska.

Ronald D. Murphy

Mr. Murphy, 48, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murphy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Michael S. Mundy

Mr. Mundy, 33, has had ITDM since 1994. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mundy meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Charles B. Page

Mr. Page, 46, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Page meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

John A. ReMaklus

Mr. ReMaklus, 44, has had ITDM since 2002. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. ReMaklus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Howard D. Rood

Mr. Rood, 49, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Michael D. Schooler

Mr. Schooler, 36, has had ITDM since 1992. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schooler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

Arthur L. Stapleton, Jr.

Mr. Stapleton, 40, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stapleton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Joseph R. Suits

Mr. Suits, 31, has had ITDM since 1982. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Suits meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Cory L. Swanson

Mr. Swanson, 31, has had ITDM since 1999. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Jeffrey M. Thew

Mr. Thew, 26, has had ITDM since 2003. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thew meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Mark A. Thompson

Mr. Thompson, 29, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arkansas.

Glenn R. Tyrrell

Mr. Tyrrell, 32, has had ITDM since 1982. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tyrrell meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Barney J. Wade

Mr. Wade, 42, has had ITDM since 1984. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wade was granted an exemption by FMCSA from the vision standard at 49 CFR 391.41(b)(10) on May 25, 2006. His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Dennis D. Wade

Mr. Wade, 51, has had ITDM since 1997. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Donald L. Winslow

Mr. Winslow, 39, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winslow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Eugene R. Whitaker

Mr. Whitaker, 60, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whitaker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Richard A. Zellweger

Mr. Zellweger, 60, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zellweger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the date indicated earlier under dates in this notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹ The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three

¹ Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule," but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified in the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: September 27, 2006.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulations.

[FR Doc. E6-16276 Filed 10-2-06; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463-9, September 14, 2006) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6-16294 Filed 10-2-06; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 27, 2006.

The Department of the 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 November 2, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1181.

Type of Review: Extension.

Title: Required Payment or Refund Under Section 7519.

Forms: 8752.

Description: This form is used to verify that partnerships and S corporations that have made a section 444 election have correctly reported the payment required under section 7519.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 565,920 hours.

OMB Number: 1545-2017.

Type of Review: Extension.

Title: Notice 2006-46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

Description: Final regulations were issued on January 23, 2006 permitting transactions effected under the statute of a foreign jurisdiction or a U.S. possession to qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A). The filing requirements require the corporate transferor notify the IRS of the transfer. The information provided will be used on audit by revenue agents to verify that the transferor qualified for nonrecognition and that the transferee

will be subject to tax of a subsequent disposition of the transferred USRPI.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545-0390.

Type of Review: Extension.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Forms: 5306.

Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 7,878 hours.

OMB Number: 1545-0390.

Type of Review: Extension.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Forms: 5306.

Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 7,878 hours.

Clearance Officer: Glenn P. Kirkland (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6-16255 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of The Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal

Revenue Code of 19086, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait.
Lebanon.
Libya.
Qatar.
Saudi Arabia.
Syria.
United Arab Emirates.
Yemen, Republic of.

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: September 26, 2006.

Harry J. Hicks III,

International Tax Counsel (Tax Policy).

[FR Doc. 06-8437 Filed 10-2-06; 8:45 am]

BILLING CODE 4870-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6118, Claim of Income Tax Return Preparer Penalties.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Claim of Income Tax Return Preparer Penalties.

OMB Number: 1545-0240.

Form Number: 6118.

Abstract: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 56 minutes.

Estimated Total Annual Burden Hours: 9,300.

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: September 25, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16236 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbal@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545-0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100.

Estimated Time per Response: 3 hrs., 57 mins.

Estimated Total Annual Burden Hours: 385.

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: September 25, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16238 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive

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 e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: E-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive.

OMB Number: 1545-1823.

Abstract: E-Services is a system which will permit the Internal Revenue Service to electronically communicate with third party users to support electronic filing and resolve tax administration issues for practitioners, payers, states and Department of Education Contractors. Registration is required to authenticate users that plan to access e-services products. This system is a necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the Internet and accessible through the irs.gov Web site. TIN Matching allows a payer, or their authorized agent, who is required to file information returns for income subject to backup withholding to match TIN/Name combinations through interactive and bulk sessions. It is necessary for payers to apply online to use TIN Matching, and the information requested in the application process is used to validate them systemically as payers of the correct types of income.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations and not-for-profit institutions.

Registration

Estimated Number of Responses: 1,320,000.

Estimated Average Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 440,000.

TIN Matching Application

Estimated Number of Responses: 18,825,000.

Estimated Average Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 3,150,000.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16240 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[IA-57-94]

Proposed Collection; Comment Request For Regulation Project**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA-57-94 (TD 8652), Cash Reporting by Court Clerks (§ 1.6050I-2).

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Cash Reporting by Court Clerks.

OMB Number: 1545-14499.

Regulation Project Number: IA-57-94.

Abstract: This regulation concerns the information reporting requirements of the Federal and State court clerks upon receipt of more than \$10,000 in cash as bail for any individual charged with a specified criminal offense. The Internal Revenue Service will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name is required to be included on for 8300.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16241 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[FI-43-94]

Proposed Collection; Comment Request for Regulation Project**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI-43-94 (TD 8649), Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions (§ 1.1258-1).

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

OMB Number: 1545-1452.

Regulation Project Number: FI-43-94.

Abstract: Internal Revenue Code section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized. To be eligible for netting relief, the taxpayer must identify on its books and records all the positions that are part of the conversion transaction. This must be done before the close of the day on which the positions become part of the conversion transaction.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16242 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-106030-98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-106030-98, Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income (§§ 1.863-8(g) and 1.863-9(g)).

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income.

OMB Number: 1545-1718.

Regulation Project Number: REG-106030-98.

Abstract: The information requested in proposed sections 1.863-8(g) and 1.863-9(g) is necessary for the Service to audit taxpayers' returns to ensure that taxpayers are applying the regulation properly.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 250.

Estimated Average Time per

Respondent/Recordkeeper: 5 hours.

Estimated Total Annual Reporting/Recordkeeping Hours: 1,250.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16243 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000-41

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 Revenue Procedure 2000-41, Change in Minimum Funding Method.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516,

1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Change in Minimum Funding Method.

OMB Number: 1545-1704.

Revenue Procedure Number: Revenue Procedure 2000-41.

Abstract: Revenue Procedure 2000-41 provides a mechanism whereby a plan sponsor or plan administrator may obtain a determination from the Internal Revenue Service that its proposed change in the method of funding its pension plan(s) meets the standards of section 412 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 5,400.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16245 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97-48

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 Revenue Procedure 97-48, Automatic Relief for Late S Corporation Elections.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Automatic Relief for Late S Corporation Elections.

OMB Number: 1545-1562.

Revenue Procedure Number: Revenue Procedure 97-48.

Abstract: The Small Business Job Protection Act of 1996 provides the IRS with the authority to grant relief for late S corporation elections. This revenue procedure provides that, in certain situations, taxpayers whose S

corporation election was filed late can obtain relief by filing Form 2553 and attaching a statement explaining that the requirements of the revenue procedure have been met.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16246 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****[REG-208165-91; REG-209035-86]****Proposed Collection; Comment Request For Regulation Project.****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, REG-208165-91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG-209035-86 (TD 8862), Stock Transfer Rules (§§ 1.367(a)-8 and 1.367(b)-1).

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: REG-208165-91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG-209035-86 (TD 8862), Stock Transfer Rules.

OMB Number: 1545-1271.

Regulation Project Number: REG-208165-91 and REG-209035-86.

Abstract: A United States entity must generally file a gain recognition agreement with the IRS in order to defer gain on a Code section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a Code section 367(b) exchange. These regulations provide guidance and reporting requirements related to these transactions to ensure

compliance with the respective Code sections.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 580.

Estimated Time per Respondent: 4 hours, 7 minutes.

Estimated Total Annual Burden Hours: 2,390.

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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16252 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****[REG-111835-99]****Proposed Collection; Comment Request for Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, Regulations Governing Practice Before the Internal Revenue Service (§§ 31.10.6, 31.10.29 and 31.10.30).

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Practice Before the Internal Revenue Service.

OMB Number: 1545-1726.

Regulation Project Number: REG-111835-00.

Abstract: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; (3) practitioners do not use e-commerce to make misleading solicitations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 56,000.

Estimated Time per Respondent: 53 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: September 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-16253 Filed 10-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0523]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran-borrower's ability to qualify for a guaranteed loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 4, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irnmkess@vba.va.gov*. Please refer to "OMB Control No. 2900-0523" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Analysis, VA Form 26-6393.

OMB Control Number: 2900-0523.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-6393 is used to determine a veteran-borrower

qualification for a VA-guaranteed loan. Lenders complete and submit the form to provide evidence that the lender's decision to submit a prior approval loan application or close a loan on the automatic basis is based upon appropriate application of VA credit standards.

Affected Public: Business or other for profit.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 125,000.

Dated: September 20, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6-16210 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0406]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed by lenders to determine whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any VA-guaranteed loans on an automatic basis.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 4, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or <mailto:irmnkess@vba.va.gov>. Please refer to "OMB Control No. 2900-0406" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Verification of VA Benefits, VA Form 26-8937.

OMB Control Number: 2900-0406.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders authorized to make VA-guaranteed home or manufactured loans on an automatic basis are required to determine through VA whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. Lenders cannot close any proposed automatic loan until evidence is received from VA stating that there is no debt, or if a debt exists, or the veteran has agreed on an acceptable repayment plan, or payments under a plan already in effect are current. VA Form 26-8937 is used to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that is needed for the debt check and to eliminate unlimited versions of lender-designed forms. The form also informs the lender whether or not the veteran is exempt from paying the funding fee, which must be collected on all VA home loans unless the veteran is receiving service-connected disability compensation.

Affected Public: Individuals of households.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 50,000.

Dated: September 20, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6-16211 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0358]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for additional educational benefits for a change of program or reenrollment after unsatisfactory attendance, conduct or progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 4, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0358" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must

obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22-8873.

OMB Control Number: 2900-0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C. 3691. A claimant can normally make one change of program without VA approval. VA approval is required if the claimant makes any additional change of program. Before VA can approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22-8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA education records or the results of academic or vocational counseling are not available to VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,882 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 23,763.

Dated: September 20, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6-16212 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0073]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 2, 2006.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-8374, FAX (202) 565-7870 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0073." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0073" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Enrollment Certification, VA Form 22-1999.

OMB Control Number: 2900-0073.

Type of Review: Revision of a currently approved collection.

Abstract: School officials and employers complete VA Form 22-1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 1, 2006 at pages 31262-31263.

Affected Public: Not-for-profit institutions, business or other for-profit, Federal Government, and State, local or tribal government.

Estimated Annual Burden: 158,975 hours.

a. Electronically—8 minutes.

b. Paper copy—10 minutes.

Frequency of Response: On occasion.

Estimated Annual Response:

1,109,129.

a. Electronically—776,390.

b. Paper copy—332,739.

Estimated Number of Respondents: 7,485.

Dated: September 20, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6-16213 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0427]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 2, 2006.

FOR FURTHER OR A COPY OF THE SUBMISSION CONTACT:

Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-8374, FAX (202) 565-7870 or e-mail to:

denise.mclamb@mail.va.gov. Please

refer to "OMB Control No. 2900-0427."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0427" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Former POW Medical History, VA Form 10-0048.

OMB Control Number: 2900-0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA physicians complete VA Form 10-0048 during a claimant's medical examination. The data collected will be used to assess the healthcare, disability compensation or rehabilitation needs of former prisoner of war.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 29, 2006 at page 37167.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 113 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 75.

Dated: September 20, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6-16214 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on CARES Business Plan Studies will be held on October 19, 2006, from 4 p.m. to 8 p.m. at the VA Medical Center Saint Albans Campus, Pratt Auditorium, 179-00 Linden Boulevard, St. Albans, NY. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of

Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset Realignment for Enhanced Services (CARES) Decision document. The agenda will include a discussion of the summary of the proposed space plan and siting of new multi-specialty outpatient clinic on the VA Medical Center St. Albans campus.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meetings, please contact Mr. Jay Halpern, Designated Federal Officer, (00CARES), 810 Vermont Avenue, NW., Washington, DC 20024 by phone at (202) 273-5994, or by e-mail at jay.halpern@hq.med.va.gov.

Dated: September 22, 2006.

By direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 06-8405 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board will be held on October 17-18, 2006, at the Hotel Palomar, 2121 P Street, NW., Washington, DC. On October 17, the session is scheduled to begin at 8:30 a.m. and end at 3 p.m. and on October 18, to begin at 8:30 a.m. and end at 10:30 a.m.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and

propriety of technical details, including protection of human subjects.

The session will be open to the public on October 17 from 8:30 a.m. to 9 a.m. for the discussion of administrative matters and the general status of the program. The sessions will be closed from 9 a.m. to 3 p.m. on October 17 and will be closed the entire day on October 18, 2006 for the Board's review of research and development applications.

During the closed portions of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254-0183.

Dated: September 22, 2006.

By direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 06-8462 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards

will be held on November 13-14, 2006, from 8 a.m. to 5 p.m. each day. The meeting will be held in room 200BB at 1575 I (Eye) Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation, and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of the discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases to exposure to ionizing radiation. On November 13, there will be a presentation by VA's Public Health and Environmental Hazards Office.

An open forum for oral statements from the public will be available for 30 minutes in the afternoon each day. People wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Members of the public wishing to attend should contact Ms. Bernice Green at the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273-7211, or by fax at (202) 275-1728. Individuals should submit written questions or prepared statements for the Committee's review to Ms. Green at least five days prior to the meeting. Those who submit material may be asked for clarification prior to its consideration by the Committee.

Dated: September 21, 2006.

By direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 06-8404 Filed 10-2-06; 8:45 am]

BILLING CODE 8320-01-M

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